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# Security Council

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## Letter dated 17 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 September 2003 (S/2003/909). The Counter-Terrorism Committee has received the attached third report from Namibia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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## Annex

### Letter dated 12 February 2004 from the Permanent Representative of Namibia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Please find enclosed the third report of the Government of the Republic of Namibia submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure). A copy of the Namibian Arms and Ammunition Act, 1996, is also enclosed.

(*Signed*) Martin **Andjaba**
Ambassador
Permanent Representative

**Enclosure***

**Third Report of the Government of the Republic of Namibia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)**

The third report is being submitted in response to the Counter-Terrorism Committee's further questions and comments as contained in its letter dated 25 July 2003.

Paragraph 1:

1.2. Effective implementation of sub-paragraph 1 (b) of the Resolution requires a State to have in place provisions specifically criminalizing the willful provision or collection of funds by its nationals or in its territory, by any means directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used to carry out terrorist acts. For an act to constitute an offence as describe above it is not necessary that the funds be actually used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- The only related terrorist act takes place or is intended to take place outside the country;
- No related terrorist act actually occurs or is attempted;
- No transfer of funds from one country to another takes place;
- The funds are legal in origin.

The CTC would appreciate receiving an outline of legal provisions in Namibia which fully comply with this aspect of the Resolution or in their absence an indication from Namibia of the steps it intends taking in order to fully comply with this aspect of the Resolution.

Response

Currently there is no law which complies with this aspect of the Resolution. However, Namibia is in the process of finalizing Anti-Terrorism Activities Bill which intends to cover the said aspect of the resolution.

1.3. In its second report (at page 1) Namibia indicates that section 50 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) requires all commercial banks to report to the Bank of Namibia any suspicious transaction. Sub-paragraph 1 (a) of the Resolution requires a State to impose a legal obligation on banks and financial institutions and other financial intermediaries (such as lawyers, notaries and accountants when engaged in brokering activities) to report suspicious transactions to the financial intelligence unit or other relevant authorities. The CTC would

* Annexes are on file with the Secretariat and are available for consultation.

appreciate an outline of the legal provisions which fully meet the requirements of sub-paragraph 1 (a) of the Resolution or in their absence, an indication of the steps which Namibia intends taking in order fully to meet the requirements of this sub-paragraph.

Response

Section 50 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) places a duty on commercial banks to report to the Bank of Namibia any suspicious transactions. This law is not applicable to non-banking institutions and other financial intermediaries. The Government is currently considering an Anti-Money Laundering Bill which would place such an obligation on the category of persons in question.

1.4. The CTC notes that, according to Namibia's second report (at page 1), the requirement of banks to report suspicious transactions aimed at uncovering cases of money laundering could be extended, with the passing of the Anti-Terrorism Activities Bill, to include the funding of terrorism. The CTC would appreciate receiving an outline of and a progress report on the relevant provisions of the Anti-Terrorism Bill.

Response

The relevant provisions are contained in Chapter 2 of the Draft Anti-Terrorism Bill, in particular under the headings "Fund-raising" and "Funding arrangements", which read as follow:

"Fund-raising

6. (1) any person who-

(a) invites another to provide money or other property; or

(b) receives money or other property; or

(c) provides money or other property; and

(d) intends that such money or other property or any part thereof to be used or ought to have known, or suspected that the money or other property or any part thereof may be used, for the purposes of terrorism,

commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years, without the option of a fine.

(2) In this section a reference to the provision of money or other property or part thereof is a reference to the money or other property or part thereof being given, lent or otherwise made available".

"Funding arrangements

7. Any person who enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and he or she knows or to have known or suspect or ought to have suspected that it will or may be used for the purposes of terrorism commits an offence and is liable on conviction to imprisonment for a period not exceeding twenty years, without the option of a fine".

1.5. The CTC would appreciate receiving additional information regarding legislation and/or other instruments in place requiring financial institutions to include originator information (name, address, account number) on fund transfers. In addition, the CTC would be content to learn what instruments are in place for licensing and/ or registering persons or legal entities that transmit money or value, including non-depository, money service businesses?

Response

In terms of a Determination on Money Laundering and "know your customer Policy" (BID-3) issued by the Governor of the Bank of Namibia in terms of section 71 (3) of the Banking Institutions Act, banking institutions within Namibia are required to keep originator information on persons or institutions with which they deal. This is not applicable to non-banking institutions. Non bank financial institutions must be licensed or registered by the Namibia Financial Institutions Supervisory Authority (NAMFISA) to conduct business. These institutions include private pension funds, stock exchanges, investment managers, money lenders, insurance companies and intermediaries etc.

1.6. In its reply to sub-paragraph 1 (c) of the Resolution, Namibia indicates in the second report (at page 2) that under Regulation 4 of the Exchange Regulations, the Bank of Namibia has the power to freeze the accounts of persons transferring funds to specific persons or institutions such as those identified in United Nations Security Council Resolution 1267 (1999). Sub-paragraph 1 (c) of the Resolution requires that States freeze without delay the funds, financial assets or economic resources of individuals and entities, both resident and non-resident, who commit, attempt to commit or participate in or facilitate the commission of terrorist acts. It should be noted that, for this purpose, the funds and other financial resources need not represent the proceeds of crime, but could be legal in origin and yet be used to fund terrorist activities either within or outside the territory of Namibia. The CTC would appreciate receiving an outline of the legal provisions which fully meet the requirements of this sub-paragraph or, in their absence, an indication of the steps which Namibia intends taking in order fully to meet the requirements of this sub-paragraph of the Resolution. The CTC would further appreciate knowing whether Namibia can freeze funds suspected of being related to terrorism at the request of another State.

Response

Namibia's response on the implementation of sub-paragraph 1 (c) of the Resolution is reflected on page 4 of the Security Council Document S/2003/494. There seems to be no specific provision that Namibia could freeze funds suspected of being related to terrorism at the request of another State. However, Namibia having acceded to Article VIII, section 2(b) Agreement of the IMF can block funds suspected of being related to terrorism at the request of another IMF/World Bank Member State, provided that there was a contravention of that Member State's exchange control regulations.

1.7. Effective implementation of sub-paragraph 1 (d) of the Resolution requires a State to have in place a mechanism to register, audit and monitor the collection and use of funds and other resources by religious, charitable and other associations, with a view to ensuring that these are not diverted from purposes other than their stated purposes, in particular to the financing of terrorism. The CTC would be grateful to receive an outline of the legal provisions which fully meet the requirements of this sub-paragraph of the Resolution or in their absence an indication from Namibia of the steps which it intends taking in order fully to meet the requirements of this sub-paragraph.

Response

The relevant provisions which are intended to address this sub-paragraph are contained in the Draft Anti-Terrorism Activities Bill, which is quoted hereunder:

"6. (1) Any person who directly or indirectly in any manner –

(a) provides material, logistical or organizational support or any resources;

(d) uses property, directly or indirectly, in whole or in part;

(e) possesses property intending that it be used directly or indirectly in whole or in part,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding thirty years, without the option of a fine".

1.8. Sub-paragraph 2 (a) of the Resolution requires each State to criminalize within its territory the recruitment of persons with a view to their joining terrorist groups, operating inside or outside its territory. It is to be noted in this regard that it is not always the case that a recruiting agent will belong to a criminal or terrorist organization. The possibility exists that recruitment may be carried out by deception. For example, the putative purpose of recruitment may be one (e.g. teaching) which differs from its true purpose. Namibia indicates in its second report (at page 3) that the Defence Act 2002 does not directly prohibit the recruitment of members of terrorist groups. However according to the report,

Chapter 2 of the Defence Act 2002 deals with membership of terrorist organizations. It appears that Namibia does not have legal provisions which fully meet the requirements of this sub-paragraph of the Resolution. The CTC would be grateful to receive an indication from Namibia of the steps which it intends taking in order fully to meet the requirements of this sub-paragraph of the Resolution.

Response

The Counter-Terrorism Committee's comment as stated in this sub-paragraph does not reflect Namibia's response as contained on page 4 of the Security Council Document No. S/2003/494 dated 25 April 2003. The CTC should read once again Namibia's second report. It was not reported that "Chapter 2 of the Defence Act 2002 deals with membership of terrorist organizations". But that **The Defence Act, 2002 does not directly prohibit recruitment of members of terrorist groups. However, if passed by Parliament, the proposed Anti-Terrorism Activities Bill, Chapter 2 deals with "Membership of terrorist organizations"**.

1.9. The CTC notes, in Namibia's second report (at page 3) that the Arms and Ammunitions Act, 1996 prohibits the buying and selling of firearms without a licence. The CTC would appreciate receiving an outline of the relevant provisions of the Act.

Response

The relevant provisions are in chapters 1, 3, 4 and 6. However, as these provisions refer to others, a copy of the Arms and Ammunition Act, 1996, is enclosed.

1.10. In reply to sub-paragraphs 2 (c), (d) and (e) of the Resolution, Namibia indicates, in its second report (at page 3), that the Anti-Terrorism Activities Bill under the heading "prohibition of rendering assistance and support" addresses the provisions of these sub-paragraph. The CTC would be grateful to receive a progress report of the enactment and an outline of the relevant provisions of the Bill.

Response

The Bill is currently with the Legal drafters. The relevant provisions are quoted hereunder:

"6. (1) Any person who directly or indirectly in any manner –

(a) provides material, logistical or organizational support or any resources;

(b) conceals or disguises the nature, location, source, or ownership of the resources mentioned in sub-paragraph(a), or the nature of the support or resources referred to in paragraph(a), or

(c) arranges, manages, addresses or assists in arranging, managing or addressing a meeting;

(d) uses property, directly or indirectly, in whole or in part,

(e) possesses property intending that it be used directly or indirectly in whole or in part;

(f) knows or ought to have known that such assistance, support or resources are calculated or intended to be used -

(i) in the commission of an offence under this Act; or

(ii) in the concealment of the commission or attempted commission of an offence or to facilitated the escape of a person who had committed or attempted to commit an offence under this Act; or

(g) participates or attempts to participate in the activities of a terrorist organization,

shall be guilty of an offence and is liable on conviction to imprisonment for a period not exceeding thirty years, without the option of a fine.

(2) Support under subsection (1) includes but is not limited to:

(a) an offer to provide, or the provision of, forged or falsified travel documents to a member of a terrorist organization;

(b) an offer to provide, or the provision of a skill or an expertise for the benefit of, at the direction of or in association with a terrorist organization; or

(c) entering or remaining in any country for the benefit of, or at the direction of or in association with a terrorist organization."

1.11. Section 2 (g) of the Resolution deals, amongst other things, with border controls. In that respect Namibia's supplementary report notes (at page 5) steps taken to computerize its border posts and immigration services. The CTC would appreciate receiving additional information on the nature and extent of Namibia's efforts in this respect.

Response

All but three border Posts are fully computerized with regard to customs entry and clearance of goods.

1.12. What competence have the courts of Namibia to deal with the following kinds of criminal acts:

- an act committed outside Namibia by a person who is a citizen of, or habitually resident in Namibia (whether that person is currently present in Namibia or not);

- an act committed outside Namibia by a foreign national who is currently in Namibia?

Response

As a general principle, courts in Namibia do not have jurisdiction to try offences committed outside Namibia except as indicated hereunder.

Courts in Namibia exercise jurisdiction with regard to offences committed outside Namibia by a person who is a citizen or residing in Namibia in the following offences:

(a) High treason (provided the offender owes allegiance to Namibia);

(b) Theft (because it is a continuous offence);

(c) Offences committed on Namibian ships whether on territorial waters or not (Merchant Shipping Act, No 57 of 1951);

(d) Offences committed on Namibian aircraft wherever they might be in the world (section 18 of Aviation Act, No 74 of 1962);

(e) Offences committed on any aircraft provided such aircraft lands in Namibia with the offender on board or that the offender is present in Namibia (Civil Aviation Act, No 10 of 1972);

(f) A Namibian citizen may be prosecuted and punish in Namibia for any extraditable offence which that citizen committed in a foreign country provided that, an extradition request for that person was made and the person cannot be extradited by virtue of his or her Namibian citizenship and the Prosecutor General of Namibia has authorized the prosecution of such person.

(g) Namibian courts are competent to recover a fine, to enforce a compensatory order, confiscation order and a restraint order issued by a foreign State against any person whether or not he is in Namibia provided the person concerned holds property in Namibia (sections 15,20, and 24 of the International Cooperation in Criminal Matters Act, No 9 of 2000);

(h) Namibian courts are competent to conduct extradition proceedings against any foreign national who is in Namibia.

1.13 In response to sub-paragraphs 3 (b) and (c) of the Resolution, in its second report (at pages 4 and 5), Namibia states that its legislation provides for extradition either through the conclusion of extradition agreements with other countries or by the

designation of specific countries to which it is prepared to extradite. The CTC notes from the second report that, as of now, Namibia has not conclude any extradition agreements, whether of a bilateral or a multilateral nature, with other States, nor has it designated any countries to which extradition may be effected. Nevertheless, Namibia has provided a list of States which have been designated for extradition and mutual legal assistance. The CTC would appreciate receiving clarification in relation to this apparent contradiction. The CTC would also appreciate receiving information on the manner in which Namibia deals with requests for extradition and mutual legal assistance.

Response

No contradiction at all. The members of the CTC are encouraged to read that paragraph once again, as contained on page 6 of the Security Council Document S/2003/494 of 25 April 2003. Namibia does not have extradition or mutual legal assistance agreements with any country at the moment, but it has designated countries mentioned in the list. Extradition or mutual legal assistance relations can be established by either of the two means i.e. an agreement or designation but not both of them in respect of the same State.

Requests for extradition are made in writing to the Minister of Justice by the Diplomatic or Consular representative of the requesting State, or by Interpol on behalf of the requesting State. The Ministry of Justice has a central authority that receives and processes all incoming and outgoing extradition requests. Upon receipt of an extradition request from a designated State, the Minister of Justice if he or she is satisfied that the fugitive can be surrendered to the requested State, issue an authority to proceed. The authority to proceed is directed to a magistrate. When the Magistrate receives the extradition documents, and the warrant of arrest is properly authenticated, the Magistrate shall endorse the warrant of arrest and whereupon the warrant of arrest shall be executed. Once the fugitive has been arrested he or she must be brought before a Magistrate within 48 hours of his or her arrest. Thereafter the Magistrate must conduct an extradition inquiry. The Extradition Act requires **dual criminality** (an offence punishable by imprisonment in the requesting State and in Namibia for a period of 12 months or more). **Prima Facie evidence** of the commission of the offence is also a prerequisite. If at the end of the inquiry the Magistrate is satisfied that the fugitive is liable for surrender, the Magistrate shall issue an order committing the fugitive to prison pending the decision of the Minister of Justice. The fugitive may within 14 days after the committal order of the Magistrate is issued, appeal to the High Court. If the Minister of Justice is satisfied that the return of the fugitive is not prohibited by any law he or she may issue a written order for the surrender of the fugitive to the requesting State.

Mutual legal assistance can only be rendered to a country that is designated or where there is an agreement between Namibia and that country for mutual legal assistance. The nature of legal assistance that Namibia can render is executing letters of request, recovery of fines, executing compensatory orders, confiscation orders and restraint orders. Requests for mutual legal assistance should be directed to the Permanent Secretary for Justice or directly to the relevant court having jurisdiction. After receipt of requests for

execution of letters of requests, recovery of fines, compensatory orders and confiscation orders they are registered by the relevant court and thereafter they may be executed. With regard to letters of request the record of the evidence is immediately transmitted to the requesting State. Monies recovered for compensatory orders, fines, and confiscation orders are paid to the requesting State.

1.14 Namibia indicates in its first report (at page 3) that it has signed the Convention for the Suppression of the Financing of Terrorism. In its second report (at page 6), it indicates that it has acceded to the Convention on the Physical Protection of Nuclear Material. The CTC would be grateful for a report on the implementation in domestic law of the two conventions to which Namibia is a party. In addition, the CTC would also appreciate a progress report on Namibia's becoming a party to the ten conventions and protocols relating to terrorism to which it has yet to become a party.

Response

Indeed Namibia has signed the Convention for the Suppression of the Financing of Terrorism. But it has not ratified it. Thus, it is not yet a party to that Convention. With regard to the Convention on Physical Protection of Nuclear Material, there is no specific law adopted immediately after Namibia's accession to this Convention intended to implement it. The eleven conventions and protocols are still under consideration by the relevant ministries and institutions.

1.15. Sub-paragraph 3 (g) of the Resolution requires that States should ensure that claims of political motivation are not recognized as grounds for the refusal of requests for extradition of alleged terrorists. The CTC would appreciate hearing how Namibia would deal with an alleged terrorist who claimed political motivation for committing terrorist acts.

Response

In terms of section 5(1)(a) of the Extradition Act, No 11 of 1996 a person shall not be extradited or kept in custody for purposes of extradition if the offence for which is sought for is an offence of a political nature. Up to date Namibian courts have not yet dealt with a case where the political offence exception was raised. It remains to be seen how Namibian courts will deal with the political offence exception whenever it will be raised in any given case in the future.

1.16 The CTC is aware that Namibia may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Namibia's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of the Resolution.

Response

Namibia has not submitted reports or questionnaires related to this subject to other organizations.

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**Letter dated 17 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council**

I write with reference to my letter of 10 April 2002 (S/2002/397). The Counter-Terrorism Committee has received the attached supplementary report from Botswana, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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## Annex

### Letter dated 13 February 2004 from the Deputy Permanent Representative of Botswana to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On instructions from my Government, I have the honour to transmit herewith a supplementary report pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001 (see enclosure). I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(*Signed*) Leutlwetse **Mmualefe**
Deputy Permanent Representative

Enclosure

# REPORT BY THE GOVERNMENT OF BOTSWANA PURSUANT TO SECURITY COUNCIL RESOLUTION 1373 (2001)

## INTRODUCTION

The Government of Botswana is strongly committed to the full and effective implementation of the Security Council resolutions on terrorism. In this regard, the Government has established a National Anti-Terrorism Committee, and its mandate is to ensure that Botswana fully abides by its obligations under these resolutions, in particular resolution 1373 (2001).

The Anti-Terrorism Committee is composed of the following:

i) The Ministry of Foreign Affairs which chairs the Committee
ii) The Office of the President
iii) The Attorney General
iv) The Department of Civil Aviation
v) Botswana Defence Force
vi) Botswana Police
vii) The Department of Customs and Excise
viii) The Department of Immigration and Citizenship
ix) Bank of Botswana.

The Committee has met several times and taken a number of steps to ensure that all the provisions of resolution 1373 (2001) are fully implemented. These steps include the enforcement of financial laws and regulations, immigration control, aviation security, asylum control and other law enforcement measures.

## OPERATIVE PARAGRAPH 1

## MEASURES TAKEN TO PREVENT AND SUPPRESS THE FINANCING OF TERRORIST ACTS

**Sub-Paragraph a):** Within the context of Botswana it must be noted that terrorism per se has not been criminalised. What has been criminalised would be acts that may be considered related to "terrorist acts". The problem here is that we are therefore operating within the precincts of an undefined concept.

However where there are any such criminal acts, as may amount to terrorist acts, parties to the commission thereof would be liable to prosecution as principal offenders, accomplices or persons aiding, abetting or counselling others to commit such acts. For instance, if one were to attempt , aid, abet, or counsel any other person to commit certain acts like piracy, hijacking, conspiring to commit evident offences abroad or various subversive activities inimical to the public order and security of Botswana etc, that person would be liable to prosecution.

The Government of Botswana has instituted strict measures to ensure that funds owned by the nationals of Botswana or funds in the territory of Botswana are not used to support terrorist activities. Following the terrorists attacks which took place in New York, Washington, D.C. and Pennyslvania on 11 September 2001, Bank of Botswana issued a circular to all financial institutions in Botswana with clear instruction that they should take all measures necessary to ensure that they do not provide safe harbour for terrorist actions or activities and to freeze without delay funds and other financial assets of persons who may be suspected of participating in terrorist activities. Circulars issued by the Bank of Botswana to financial institutions are not legal instruments. They are administrative measures issued within the ordinary practice and custom of a central bank, and within its powers as a supervisory authority.

**Sub-Paragraph b):** As indicated at paragraph 1(a) where a person aids, abets , counsels or procures another to commit an offence, such a person would be liable to prosecution in the same manner as if he were a principal offender. In the present context therefore, any person who provides or collects funds in the territory of Botswana towards the commission of any offence would be liable to prosecution. This would thus cover acts that would fall within acts classified as terrorist acts. Such acts would become clear where they are referred to under specific paragraphs below.

**Sub- Paragraph c):** Generally under the various laws that may deal with the seizure or confiscation of assets, there may be established, by evidence, the linkage between the assets or property, with the commission of an offence or the furtherance of plans or objectives to commit an offence. As such law allows freezing or seizure of assets being shown to be proceeds of crime.

Similarly instrumentalities kept or used for the commission of an offence would be liable to seizure or freezing.

The Government of Botswana is happy to report that so far, no activities have been detected to suggest that Botswana's financial institutions could have been used to make funds, financial assets or financial services available, directly or indirectly for the benefit of persons involved in terrorist activities. This is largely due to the country's strict laws on money laundering.

The measures in place include a number of laws aimed at criminalising money laundering and enhancing the capacity of the law enforcement agencies to deal with this crime. The first such law is the **PROCEEDS OF SERIOUS CRIMES ACT** of 1990, the object of which is to deprive persons convicted of serious crimes of the benefit or rewards gained from such crimes. The Act explicitly proscribe the conduct of money laundering and prescribed a relatively high sentence upon conviction.

Section 2(3) © of the Proceeds of Serious Crime Act ( Act 19/1990) enables the seizure of assets which are ostensibly not proceeds of crime. In this context, where a person receives payment, reward or derives a pecuniary advantage arising out of that person's conduct for the purposes of carrying out or furthering criminal activities, such payment, reward etc shall be deemed to be proceeds of crimes. They would thus be liable to seizure under the Proceeds of Serious Crimes Act.

During the same year, Botswana enacted the **MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT.** The import of this legislation is to facilitate mutual assistance between Botswana and countries which have reciprocal applications of its provisions. It is an instrument through which the primary objectives of the Proceeds of Serious Crimes Act are executed across our borders. To a great extent, it runs parallel to the Extraditions Act of 1990.

Additionally, and subsequently thereto, Botswana enacted the Corruption and Economic Crime Act in 1994, and the Banking Act in 1995. By the former Act, a Directorate on Corruption and Economic Crime was established which is a law enforcement agency charged with the task of investigating and prosecuting

serious economic crimes, corruption, and money laundering offences.

The Banking Act of 1995 provides for, amongst others, unfettered access of the law enforcement agencies to information on bank accounts and entrenches the "know your customer principle" and creates an obligation on banks and their external auditors to report suspicious transactions to the Central Bank and or law enforcement agencies.

The Banking Act of 1995 also incorporates guidelines on the identification of customers, the proper keeping of customers records, reporting of suspicious transactions and cooperation with law enforcement agencies. These measures form the core elements of Botswana's anti-money laundering programme.

Botswana has also paid particular attention to the requirements that measures be undertaken to detect and monitor cash or capital movements through its borders (without impeding the freedom of proper capital transfers). To this end, travellers in and out of Botswana are required to declare any funds equivalent to P10 000 (U$1 = P7) or more in their possession at any point of entry or exit. Similarly, banks are required to complete Forms for outward transfers of money equivalent to P10 000 or more.

The Banking Act also allows Bank of Botswana to share information with other supervisory authorities around the world.

The Directorate on Corruption and Economic Crime and the Central Bank have developed an effective working relationship on matters relating to financial crimes, and such relationship has contributed towards the development of formal measures to combat money laundering activities

In response to a recognition by Government that exchange controls hinder economic development, Botswana abolished exchange controls beginning 9 February 1999. However, it was recoghised that some aspects of the exchange control arrangements served to hinder money laundering, as such, the Directive issued to banks

by the Central Bank following the abolition of exchange controls ensured that these aspects were retained.

Bank of Botswana has also recently issued revised guidelines establishing minimum standards and practices by financial institutions for effective anti-money laundering programmes.

**Sub- Paragraph d):** The laws of Botswana prohibit any person within Botswana from aiding, abetting, counselling or procuring others to commit offences or conspire to commit offences. Consequently, if any person within Botswana aids, abets, counsels or procures any other person, by way of availing finances or other resources to commit any criminal act, including acts that would amount to terrorist acts, they are would be liable to prosecution, as principal offenders. They would be sentenced to the prescribed penalty upon conviction, depending on the nature of the offence at hand.

**OPERATIVE PARAGRAPH 2**

**Sub-Paragraph a):**Botswana has never provided any form of assistance or support to entities or persons involved in terrorist activities. In addition, no nationals of Botswana are known to have participated in the activities or to be members of any terrorist group.

The laws of Botswana do not specifically prohibit recruitment to terrorist groups. The nearest prohibition to recruitment to such groups would be that relating to membership of an unlawful society ( under section 68 of the Penal Code, the penalty for which is seven years imprisonment) and managing an unlawful society (under section 67 of the Penal Code, the penalty for which is years imprisonment). Such societies are unlawful when their purposes are to engage in subversive activities including levying war on the Government or any inhabitants of Botswana, subverting or promoting subversion of Government or its officials, interfering with the resistance to the administration of the law, disturbing or inciting disturbance of peace and order in any part of Botswana etc, or societies as may be declared unlawful by the President. They must have a minimum membership of ten persons.

Additionally the Foreign Enlistment Act prohibit any person within Botswana from preparing or fitting out or joining an expedition against any country without the permission of the President.( See Section 7 thereof).

Botswana has in addition to the laws mentioned above, also enacted the statutes hereunder listed to enable her to meet her international obligations to combat crime in all its forms, including offences of terrorism:

(i) Arms and Ammunition Act. Cap. 24:01

This statute limits access to firearms by persons other than the disciplined forces. The Act empowers the Commissioner of Police to regulate the issuing of arms Certificates. Under the same Act, Botswana Police is empowered to investigate cases involving Arms and ammunition trafficking.

(ii) Extradition Act, 1990 (No. 18/1990) & Extradition (Amendment) Act, 1997 (No. 9/1997)

This piece of legislation deals with extradition to and from Botswana of fugitive offenders.

(iii) Drugs and Related Substances act (No. 18/1992)

This Act is aimed at combating the incidents of drug smuggling.

We believe that the aforelisted statutory acts have contributed in no small measure to the prevention of the commission of terrorist acts in Botswana; enabled us to prohibit the recruitment of the nationals of Botswana to join terrorist groups; and prevented the supply of weapons to terrorists through the territory of Botswana.

Measures Regarding the Movements of Goods through the territory of Botswana

The Customs and Excise Duty Act of 1970 empowers the Botswana Customs Authorities to impose restrictions on the importation of

any materials that do not comply with laws of Botswana. Customs officers are empowered by the said Act to stop any vehicle or aircraft including persons for search to determine whether the goods being carried or conveyed are in compliance with the provisions of the Act or any other Botswana Laws. The goods which cannot be allowed through our borders include controlled diamonds, Arms and Ammunition, controlled drugs and money laundering.

In discharging this function, the Customs Authorities collaborate with other Law enforcement agencies such as the Police, Immigration, and the Directorate on Corruption and Economic Crime. The Authorities also collaborate with their counterparts regionally and internationally.

Regional and International Cooperation

**Sub-Paragraph b):** Botswana is a member of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO). The establishment of SARPCCO has allowed the countries of Southern Africa to share information in connection with criminal activities, investigations and proceedings relating to all kinds of crimes, including acts of terrorism. For example, Member States have recently agreed to conduct what is called Project Diamante Operation. This operation allows Member countries to work together and share information on crimes involving stolen motor vehicles, arms and ammunitions trafficking and drug smuggling and trafficking in the region.

Botswana is also a member of Interpol and participates in all ICP Interpol General Assembly Meetings. For example, we participated at the recent ICPO Interpol General Assembly Meeting, and were party to the decision of the meeting which called upon all Member States to collaborate to the fullest extent permitted by law, in identifying individuals who may have assisted in committing acts of terrorism and bringing them to justice.

Aviation Security

Botswana took immediate measures after the 11th September 2001 attacks to reinforce aviation security at its Airports. Special

attention has been given to limiting access to restricted areas and to remedy deficiencies in the screening of passengers and their baggage. The access points have been reduced at night for ensuring better and effective control. We have 100% screening of hold baggage.

The situation is kept under constant review with the help of the airlines and the non-scheduled operators. Security awareness lectures and training for security personnel is also being undertaken. A report on the aviation security measures undertaken has been submitted to the Regional Director, International Civil Aviation Organisation (ICAO) in Nairobi, Kenya.

Botswana's Aviation Security Act 1993 incorporates the main ICAO Aviation Security Conventions namely:

1. Tokyo Convention on Offences and Certain Other Acts committed on Board Aircraft (signed in Tokyo on the 14th September 1963).

2. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft (signed at the Hague on the 16th of December 1970) and,

3. Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed at Montreal on the 23rd of September 1971).

This Act provides for stringent penalties for persons caught committing or attempting to commit, aid, abet, counsel or procure persons to commit offences against civil aviation.

Immigration Control

**Sub-Paragraph c):** Botswana has established very strict regulations on the movement of persons through its borders. We have very strict requirements regulating the movements of people to and from Botswana.

**Sub-Paragraph d):**As mentioned earlier Botswana does not have legislation that is specifically meant to combat terrorism. However,

the Botswana Police's Security Intelligence Service Branch (SIS) has the mandate to investigate terrorist activities in Botswana. SIS liaises with other Intelligence Services in identifying people associated with the threat of terrorism within the country and outside its borders . To this end, the branch has signed protocols with a number of sister services but even where there are no documented agreements on cooperation, the need for exchange of information has always been mutually recognized and acted upon.

The branch also benefits from information passed to it by the local Interpol National Central Bureau on matters which the former deem to require the attention of SIS. The arrangement is such that if SIS identifies suspected perpetrators of the threat of terrorism or those who collude with them, it would inform the state authorities for appropriate action which would normally be revocation of residential status for foreigners and criminal prosecution under the Penal Code section dealing with aiding and abetting people to commit a crime for both citizens and foreigners.

Where Botswana citizens have committed crimes outside her borders or a foreign national has committed a crime outside Botswana and is now resident in Botswana, he or she will be handed over to the country in which the crime was committed following the protocols of the applicable extradition treaty where such treaty has been signed by the two countries.

In addition, under section 64 (1)© of the Penal Code the High Court has the jurisdiction to try any person for any act of piracy committed by a citizen of Botswana on the high seas, in a foreign port or harbour or in foreign territorial tidal waters. The punishment therefore would be a maximum of life imprisonment or death in the case where life threatening assaults were used.

Furthermore, a person who commits hijacking and kindred offences, whether in or out of Botswana, would be liable to prosecution in Botswana, for which punishment on conviction would be imprisonment for life.

On the other hand, where any person conspires with another to commit an offence outside the territory of Botswana they would be liable to a fine or imprisonment not exceeding 3 years (see section

61(1) of the Penal Code). Equally liable would be those who, while in Botswana, incite, instigate, command or procure others to commit such offences. The offences in question are acts of violence prescribed under the foreign territory, which acts would have been criminal if committed in Botswana. It would not matter whether the person was a citizen of Botswana or not so long as the conspiracy, instigation, incitement , command, or procuration took place in Botswana.

**OPERATIVE PARAGRAPH 3**

**Sub-Paragraph a),b),c):**Botswana is part of a number of Multilateral arrangements which contribute towards prevention and suppression of terrorism. These Multilateral arrangements include the Interstate Defence and Security Committee among SADC countries where all kinds of threats against state security are considered. The bilateral arrangements are in the form of Joint Permanent Commissions on Defence and Security between most SADC countries.
We have long had this kind of arrangement with Zimbabwe, Zambia, South Africa and Namibia. Arrangements to establish similar relations with other SADC countries are under consideration.

Anti Terrorism Conventions

**Sub-Paragraph d):**Botswana has signed and ratified the following anti-terrorism conventions:

- the 1963 Tokyo convention on Offences and certain other Acts Committed on Board Aircraft;
- the 1970 Hague Convention for the Unlawful Seizure of Aircraft and;
- the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civilian Aviation;
- Convention on Marking of Plastic Explosives;
- Convention on the Physical Protection of Nuclear Material;
- International Convention against the Taking of Hostage;
- Convention on the Prevention and Punishment of Crime against Internationally Protected Persons, Including Diplomatic Agents;

- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;
- Convention for the Suppression of Financing of Terrorism;
- International Convention on the Suppression of Terrorism Bombings;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental shelf and;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

The Convention against the Transnational Organised Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air are being considered for ratification. It is expected that the instruments of ratification will be deposited before March 2002.

Some of the provisions of these instruments have been incorporated in our National Security Act of 1986. The thrust of this Act is to proscribe any conduct intended to assist persons from aiding any foreign power to the detriment of the security and safety of Botswana. Where citizens or persons owning allegiance to Botswana commit any acts of terrorism, the said acts are punishable under this Act. Regarding those provisions we have not yet incorporated into our domestic legislation, we have put in place a number of administrative procedures and mechanisms to ensure their implementation.

**Sub-Paragraph e):** The National Security Act does not specifically contain provisions to implement the relevant international Conventions. Its focus is primarily to prescribe acts prejudicial to the safety or interest of Botswana. It mostly deals with the protection of sensitive security information.

Procedures/Mechanisms for Asylum Seekers and Refugees

**Sub-Paragraph f):** With specific reference to operative paragraph 3(f) of resolution 1373 (2001), there are clear procedures in place which serve to screen and isolate people guilty of criminal activities from genuine asylum seekers. Where this is ascertainable, those individuals have been kept outside the refugee protection regime.

**Sub-Paragraph g):** Regarding paragraph 3(g) which requires countries to be on guard against abuses of the institution of asylum where people may claim political motivation in order to avoid extradition, again Botswana has been very vigilant. Where the claim of political motivation is not supported by evidence, the affected individuals are subjected to extradition proceedings. The Extradition Act does not require bilateral treaties for its enforcement. The countries to which extradition may be made under the Act are designated by the Minister acting within the powers granted under the Act. At the moment only Commonwealth countries are designated as countries to which extradition may be done.

United Nations S/2004/132

Security Council

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**Letter dated 17 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council**

I write with reference to my letter of 21 November 2003 (S/2003/1122). The Counter-Terrorism Committee has received the attached fourth report from Canada submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-24787 (E) 230304

## Annex

### Note verbale dated 12 February 2004 from the Permanent Mission of Canada to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Canada to the United Nations presents its compliments to the Chairman of the Committee, and has the honour to forward Canada's fourth report regarding the implementation of resolution 1373 (2001) (see enclosure).

**Enclosure**

Implementation of United Nations Security Council Resolution 1373
Canada's Fourth Report to the United Nations Counter-Terrorism Committee

**1.1 The CTC would appreciate learning whether the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) has sufficient resources (human, financial and technical) to enable it to carry out its mandate.**

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is a specialized agency created to receive, analyze, assess and disclose financial intelligence on suspected money laundering and terrorist activity financing. The Centre became operational in October 2001, and the final reporting obligations were implemented in March 2003. FINTRAC is an integral part of the Government of Canada's commitment to the fight against money laundering and terrorist financing.

Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), FINTRAC provides law enforcement and intelligence agencies with financial intelligence on suspected money laundering, terrorist activity financing and threats to the security of Canada. In addition, the Centre may also provide information to foreign Financial Intelligence Units (FIUs) provided it has entered into an agreement governing such an exchange. FINTRAC has an annual budget of $32M (CAD), and a staff complement of 194 (as of December 2003). As noted in the recent Three-Year Evaluation of the National Initiative to Combat Money Laundering, FINTRAC is operational and is making disclosures to the appropriate law enforcement agencies. The Centre continues to enhance its technical capacity, and will continue to improve its technical means to sift through the more than 9 million reports it receives each year. FINTRAC is meeting its current obligations, but may require additional resources in future as it strives to optimize its analytical capacity and meet new challenges presented by a changing criminal and technological landscape.

**1.2 Could Canada please indicate how many money remittance/transfer services are registered and/or licensed in Canada? Please outline the legal provisions that it has put in place to prevent informal money/value transfer systems from being used for the purpose of financing terrorism. In the absence of such provisions, could Canada indicate the steps that it intends taking in order to fully comply with this aspect of the Resolution.**

Money services businesses (MSBs), including alternative remittance systems, are subject to the PCMLTFA. As other financial institutions and intermediaries, they are required to ascertain the identity of their clients, maintain records of certain transactions and file suspicious and prescribed financial transaction reports with Canada's financial intelligence unit, FINTRAC.

Currently, there are no registration or licensing requirements in Canada for money remitters. Canada is currently looking at options to establish a registration system for MSBs.

**1.3 Would Canada please provide the CTC with the number of suspicious transaction reports (STR) received by FINTRAC and other competent authorities?**

Financial institutions and intermediaries that are designated as reporting entities under the PCMLTFA must submit a Suspicious Transaction Report (STR) for any financial transactions that occur where there are reasonable grounds to suspect they are related to the commission of a money laundering offence or a terrorist activity financing offence.

For the fiscal year 2002/2003, FINTRAC was receiving a monthly average of 1,433 STRs. This was an increase over the previous year's average of 744 STRs per month. It should be noted however that the requirement to report STRs only came into effect in November 2001. Between November 2001 and March 2003, FINTRAC received a total of 17,197 STRs. Reporting by sector is as follows:

- 55% Financial Entities (Banks, Credit Unions, Caisses populaires, Trust and Loan companies)
- 40% Foreign Exchange Dealers and Money Services Businesses
- 5% Others (Casinos, Life Insurance, Real Estate, Securities Dealers and others)

Suspicious Transaction Reports are important to our analysis, and have figured in a significant number of our disclosures.

**1.4 The CTC would be grateful if Canada could outline its principal legal procedures concerning the confiscation of assets or the operation of other deprivation mechanisms.**

**Constitutional competence** - Canada is a federation, in which the federal Parliament has exclusive constitutional competence to enact legislation in relation to the criminal law, which includes procedural and substantive laws relating to the prevention and suppression of terrorism. The administration of criminal justice, including law-enforcement and prosecution is generally a matter for the provinces, but substantial federal jurisdiction has been established to deal with a number of federal offences and criminal justice matters of an inter-provincial or international nature. In the case of the *Criminal Code* anti-terrorism provisions, the statute provides that either the federal or a provincial Attorney-General may prosecute, allowing decisions to be made on a case-by-case basis. Federal law-enforcement and security authorities would generally have the lead on terrorism cases, with provincially-established police forces, including municipal forces, involved as necessary depending on the facts of each case. In exercising statutory powers addressed to "any peace officer", within a province, any federal officer or any officer designated as such by that province, may so act.

**Freezing of property** - In terrorist asset cases (i.e. any property that is owned or controlled by or on behalf of a terrorist group), freezing occurs automatically by operation of the statute, without the need for any decision or action on the part of executive or judicial authorities. The relevant provision applies in any case where any person in Canada or any Canadian outside Canada knows they possess, deal with, directly or indirectly such property, or undertake transactions, financial or related services in respect of such property. Canadian law also allows the criminalisation of cases where the accused was "wilfully blind" (intentionally ignorant) as to essential facts in some circumstances, and the

freezing prohibitions extend to cases where, in the face of some basis to believe the property might be owned or controlled by or on behalf of a terrorist group, the person dealing in them remained deliberately ignorant of its nature. Since no judicial or executive decision or authority is involved, the freezing occurs without any acts of seizure or restraint. The statutory freeze operates directly as a prohibition on any dealings, transactions or services in respect of such property and would apply to anyone in possession of the property or otherwise in a position to do any of the prohibited activities. Breaches of the freezing obligations are subject to prosecution as a criminal offence under a separate provision, punishable by up to 10 years' imprisonment.

**Reporting or disclosure of property or transactions** - In any case where a person knows that property in their possession or control is owned by or controlled by or on behalf of a terrorist group or has information about any transaction or proposed transaction in respect of such property, there is a positive obligation to immediately disclose the existence of the asset or information about the transaction to the Commissioner of the Royal Canadian Mounted Police (RCMP) and the Director of the Canadian Security Intelligence Service (CSIS). There is also a further requirement to report the same information to FINTRAC. Information reported to the RCMP Commissioner can, where appropriate, be transmitted to any other law-enforcement agency in Canada. FINTRAC can use the report as part of its bank of information to further assess criminal money-laundering and terrorist financing activity. In addition to any follow-up investigations by law-enforcement or CSIS, prosecutors can be asked to seek authority to seize or assume management control over the property. The Commissioner of the RCMP, and the Directors of FINTRAC and CSIS are all senior federal appointees, subject to the statutory mandates and oversight structures of their respective organisations.

**Seizure or restraint of property** - A statutory freeze under s.83.08 prohibits any dealings in the property but does not affect possession or management, for which seizure or restraint is required. Several options are available for this under Canadian law. Generally, forms of judicial search-warrant can be obtained to search for and seize property which is evidence, proceeds of a crime or "offence-related property". These usually involve physical seizure and are used for moveable and tangible property. Judicial restraint orders can also be obtained. These prohibit any disposal or other dealing in the specified property and are generally used for property that is immoveable (land etc.) or intangible (bank accounts etc.). They may be sought from a court by the relevant federal or provincial official (procedures vary). Search warrants are executed by the appropriate peace officers, whereas restraining orders operate directly on those in possession or control of the specified property. All may be obtained *ex parte* and are subject to later judicial review and opportunities for those affected to challenge the basis of the order or the manner in which it was executed. All of these categories of property are linked to the terrorism offences, so that property that is related in some way to terrorist activities, or in the case of proceeds, property that is the proceeds of a terrorist offence, will be subject to seizure or restraint under the appropriate provision.

(a) In the case of moveable property that may be criminal evidence a criminal search warrant can be obtained from a judicial officer, authorizing the physical seizure of the property.

(b) In the case of property which is "offence-related property" (property used in or intended for use in a serious crime, or by means of which a serious crime is committed) a judicial officer may issue

a warrant to search for and seize property specified in the warrant. Such warrants may be executed by any peace officer or any specific person named in the warrant. They may be used to seize moveable property that is in Canada, or as the basis of a mutual legal assistance request that a foreign State seize moveable property that is outside of Canada. Restraint orders (below) are used for immoveable or intangible property and may also be used for property outside of Canada, to the extent that persons within the jurisdiction of the issuing court can be ordered not to deal in such property. Restraint orders must be served on those bound by them, and in the case of persons outside the jurisdiction of the court reciprocal enforcement may be requested of other States.

(c) If the property is moveable property and is the proceeds of a crime, including any terrorist offence, the relevant Attorney General can seek a special search warrant to search for and seize the property. "Proceeds of crime" is defined broadly, including "any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of the commission in Canada of a designated offence, or an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence". The term "designated offence" encompasses all major criminal offences, including terrorism-related offences, and in particular the financing offences which implement the *International Convention for the Suppression of the Financing of Terrorism, 1999*, as well as the other offences which could be used to generate proceeds to finance terrorism, such as fraud, kidnapping or robbery. Such warrants may be executed by any peace officer or any specific person named in the warrant, and are subject to later review by the courts. They are generally used as a first step toward seeking the forfeiture of the proceeds.

(d) Judicial restraining orders are usually used in cases where the property cannot be physically seized using a warrant. These orders prohibit any person from disposing of or otherwise dealing with any interest in the specified property. An order sought under *Criminal Code* s.462.33 may be obtained in respect of "any property". An order may also be sought under *Criminal Code* s.490.8 in respect of any "offence-related property". This is the Canadian term that refers to instrumentalities, and includes property used or destined for use in a serious crime or "by means of or in respect of" such a crime is committed. The category of crimes to which the definition is linked includes all of the terrorism offences, which means that both types of restraining order are available in such cases. Restraining orders are available for any form of property, but are most commonly used for those forms that are not amenable to physical seizure, such as immovable (land etc.) and intangible (bank accounts etc.) property. These orders are issued by a court on the application of a prosecutor and are subject to subsequent review by the courts. They are served on the natural or legal person to whom they are addressed (e.g., banks and similar institutions), and where applicable to land are included in official records that must be checked prior to any transfer, such as land title registries.

(e) Through amendments to the *Criminal Code,* the *Anti-terrorism Act* created an additional power to restrain property linked to terrorist groups. Where there are reasonable grounds to believe that property is owned or controlled by or on behalf of a terrorist group or that it has been or will be used, in whole or in part, to facilitate or carry out a terrorist activity, its seizure or restraint and forfeiture may be sought (regarding seizure, see subparagraph (b), above). In such cases, based on information from law enforcement or CSIS, counsel for the Attorney General would seek orders for seizure or restraint from a Judge of the Federal Court of Canada. A warrant could be issued to search

for and seize any property located in Canada. A restraining order prohibiting anyone in the jurisdiction of the court from dealing in the property could be issued in respect if any property, and would generally be issued in respect of any property outside of Canada, and for any property in Canada not amenable to physical seizure, such as immovable property (e.g., land) and intangible property (e.g., bank accounts). The legislation provides for use of these powers by either federal or provincial law enforcement officials and Attorneys-General, and either may apply for the orders before the Federal Court. In most terrorism-related cases, however, these would be used by the appropriate federal agencies and officials because of the international and inter-provincial nature of the cases.

**Seizure or restraint in transnational cases** - The various seizure and restraint orders are available in response to mutual legal assistance requests under the *Convention for the Suppression of the Financing of Terrorism*, as well as other criminal law treaties containing mutual legal assistance provisions. Orders for the gathering of evidence, which require a third party to produce records or provide testimony, may also be useful in some cases. Evidence can be obtained, assets that were instrumentalities (for Canadian purposes, "offence related property") and proceeds of crime may be seized and restrained. These requests are implemented under Canada's *Mutual Legal Assistance in Criminal Matters Act*. Requests are submitted through the usual mutual assistance channels; approved by the Minister of Justice's International Assistance Group and assigned to counsel for the Attorney General of Canada or a Province to obtain the essential court orders or file the required documents with a superior court of criminal jurisdiction in Canada. Canadian law enforcement agencies enforce such orders, including the conduct of any search or seizure required, and the serving of restraint or attendance orders on those identified or likely to be affected by them within Canada.

**Management of seized or restrained property** - To protect legitimate interests and minimise any economic losses, Canadian law provides powers to manage property that has been seized or restrained, pending any final disposition of such property. The provisions apply equally to property seized or restrained as a result of domestic applications and applications made pursuant to mutual legal assistance requests. The provisions allow the court that orders seizure or restraint to impose terms and conditions. The authority to manage includes the authority to sell, in the case of property that is rapidly depreciating or perishable. Subject to court approval, on notice to persons with a valid interest, property that is of little or no value may be destroyed. On the request of the Attorney General of Canada, the court may appoint the Minister of Public Works and Government Services as manager, and in this case the property is managed by a professional property management section of that ministry under the authority of the *Seized Property Management Act*. Other provision is made for management when the request originates with the Attorney General of a province, but this will not usually arise in terrorist-financing cases.

**Relief from seizure or restraint** - As noted, seizure and restraint orders are initially obtained on an *ex parte* basis, but are open to subsequent judicial review. There is a continuing right to seek relief from these orders, from the time the order is issued or executed. Any person who has a valid interest in the property may apply to a court for relief, with notification to counsel for the (federal or provincial) Attorney General on whose application the original order was issued. Forms of relief include a right to seek access to the relevant property to fund reasonable legal, living and business expenses. The

court must consider the applicant's other assets and the appropriate legal aid tariff (rates). The right to seek relief ends if any forfeiture order is issued against the property. Relief is normally sought in a court of criminal jurisdiction, but may also be sought in the Federal Court of Canada in some cases.

**Forfeiture** - As noted, the powers of seizure and restraint, other than those to seize property as evidence in criminal cases, generally conclude with proceedings to forfeit (confiscate) the property, in a court of criminal jurisdiction. In the case of property owned or controlled by or on behalf of a terrorist group and property that has been or will be used, in whole or in part, to facilitate or carry out a terrorist activity, criminal forfeiture may still apply where appropriate, and forfeiture may also be sought though a civil application in the Federal Court of Canada. A final foreign criminal forfeiture order can also be enforced in Canada. In such cases, a request is submitted through the usual mutual assistance channels, approved by the Minister of Justice's International Assistance Group, and assigned to counsel for the Attorney General of Canada or a Province. Counsel then seeks enforcement by superior court of criminal jurisdiction in Canada. When a criminal court or the Federal Court orders forfeiture or the enforcement of a foreign order any seizure or other enforcement measures are taken by the appropriate law enforcement agency.

**Steps taken after forfeiture** - All forfeited assets are forfeited to the State, which may be the federal or a provincial government, depending upon the specific forfeiture application and the Attorney General who instituted it. Forfeiture orders are final, subject to periods for appeal set out in the statutory provisions. The status of the applicant Attorney General is important since all forfeiture provisions specify that the property is forfeited "to be disposed on as the Attorney General directs or otherwise dealt with in accordance with law". This means that the forfeited property is generally forfeited to either the federal or a provincial Attorney General, depending on which level of government initiated the proceedings. In forfeitures to the Attorney General of Canada the *Seized Property Management Act* applies and controls the forfeited property. Forfeiture could occur on any of the following authorities:

(a) The asset is offence related property (*Criminal Code*, s. 490.1);

(b) The asset is proceeds of crime (*Criminal Code*, sections 462.38 or 462.78);

(c) The seized asset's owner is unknown or the person from whom it was seized or restrained was unlawfully in possession. (*Criminal Code* sections 462.38 or 462.78);

(d) The asset is forfeited by the Federal Court of Canada as terrorism-related property (*Criminal Code*, section 83.14). Two alternatives exist for those specific forfeitures.

(i) They may be treated exactly like any other forfeiture, with the forfeited property passing to the relevant federal or provincial government, depending upon which Attorney General instituted the successful forfeiture application (section 83.14 paragraph (5)); or

(ii) Regulations may provide that the forfeiture is used to compensate victims of terrorist activities and to fund anti-terrorist initiatives. (Section 83.14, paragraphs (5.1)-(5.2)].

It is possible to confiscate the proceeds without first obtaining the conviction of the perpetrator (i.e. *in rem* confiscation). Canada's established regime for dealing with the forfeiture of proceeds of crime

has provided for forfeiture in cases where there is no criminal conviction, since 1988. Under the present law both proceeds of crime and offence-related property can be forfeited in the absence of a criminal conviction where it is proved beyond a reasonable doubt that the property is proceeds or offence-related property, and that legal proceedings have been started in respect of the related offence, but the person who would have been prosecuted has died or absconded. These provisions could be applied in cases where the property was proceeds of a terrorist offence or related to such an offence. The 2001 amendments have also added specific powers to forfeit property that is owned or controlled by or on behalf of a terrorist group, and property that has been or will be used to facilitate or carry out any terrorist activity. These provide a more general forfeiture authority: provided that the necessary link to a terrorist group or terrorist activity is established, there is no requirement that any individual terrorist offender or perpetrator be identified, prosecuted or convicted.

This provision can also be used in respect of property seized for any reason, whether this was done as a terrorist asset, as offence-related property, criminal evidence, proceeds of crime or for any other reason, or against property that has not been seized or restrained. This could occur, for example, in cases where the property is caught by a statutory freeze. The identification of the property and its link to terrorist groups or activities need only be proven on a balance of probabilities, a lower standard than the Canadian criminal law requirement of proof beyond a reasonable doubt. Forfeiture orders in respect of terrorist assets may be obtained only from the Federal Court of Canada, on the application of either the federal or a provincial Attorney General, and where forfeiture is ordered, the property can be disposed of as the Attorney General which sought the forfeiture directs.

There are appellate provisions allowing for review of the decisions taken by the authorities. All proceedings which result in powers of search, seizure, and restraint of property of any kind in Canada may be initiated *ex parte*, but are subject to some form of appeal or judicial review or scrutiny after the action is taken, with appropriate remedies where it is found to have exceeded the authority granted or where the underlying basis of the action is subsequently found to be deficient in some way. In addition to substantive and procedural grounds under the relevant legislation, such activities are also held to a basic constitutional standard that guarantees the right to be free of unreasonable search or seizure and subject to possible remedies that include the exclusion of evidence.

The specific mechanisms for such reviews and remedies vary according to the nature of the action authorized, the property in respect of which it was taken, and other factors, and details are set out in the previous responses for each power. Generally, reviews and appeals of powers used in criminal cases are heard by courts of criminal jurisdiction, often as a preliminary matter preceding a related criminal prosecution, or as an issue on the appeal of a criminal conviction. The provisions specifically governing the seizure, restraint and forfeiture of terrorism-related property, *Criminal Code* sections 83.13 and 83.14 are not dealt with by ordinary criminal courts and do not set out a specific appeal process. Since the forfeiture proceedings are not *ex parte*, notice is given to persons known to own or control the property, and where appropriate other interested parties as respondents, who may appear and challenge the forfeiture. If forfeiture is ordered, any of these parties may then appeal under the authority of s. 27 of the *Federal Court Act*. Any interested party who did not receive notice of the forfeiture application may also bring a motion to vary or set aside the forfeiture order within 60 days. The first appeal would be to the Federal Court of Appeal, which has the power to

vary or quash the order, and a subsequent appeal lies, with leave, to the Supreme Court of Canada under the provisions of the *Supreme Court Act*. All of these courts have competence to hear challenges and appeals based on both legal and constitutional issues. To date there have been no appeals relating to terrorist assets, but there have been numerous cases dealing with other criminal assets and applications to challenge seizure and restraint. The most recent notable case was a decision of the Supreme Court of Canada (*Quebec (Attorney General) v. Laroche* [2002] 3 S.C.R. 708)

As of 1 January 2004, there have not been any seizures or forfeitures under these provisions.

Canadian law allows confiscated property to be used to satisfy claims for damages brought by a person or persons who claim to have suffered injuries as a result of the commission of an offence. The relevant *Criminal Code* provision, section 83.14, subsection (5.1), reads as follows:

> Any proceeds that arise from the disposal of property under subsection (5) [property related to terrorist groups or activities as set out in subsection (1), paragraphs (a) and (b)] may be used to compensate victims of terrorist activities and to fund anti-terrorist initiatives in accordance with any regulations made by the Governor-in-Council under subsection (5.2) [distribution of proceeds].

Foreign requests for assistance and the enforcement of foreign orders are dealt with as discussed in the paragraphs dealing with seizure, restraint and forfeiture, above, under authorities set out in the *Mutual Legal Assistance in Criminal Matters Act*. The process is the same as for mutual legal assistance in general: subject to the need for appropriate security measures in respect of terrorism-related cases, a request is submitted to Canada through diplomatic channels and is referred to the appropriate unit of the federal Justice Department. There it is reviewed on legal grounds, supplementary information may be requested, and the matter is referred to the appropriate prosecutorial and law-enforcement or other authorities for action.

In the case of forfeiture, proceeds of the forfeiture are normally disposed of as the relevant (federal or provincial) Attorney General directs, but there is an exception under section 9.4 of the *Mutual Legal Assistance in Criminal Matters Act* for requests to enforce a foreign forfeiture order. In this case the property or proceeds of the disposal are deemed to have been made in favour of the federal government even if the proceedings were brought by a province. This ensures that the property is available for sharing with the requesting foreign state, pursuant to Section 11 of the *Seized Property Management Act*.

**1.5 Please indicate whether Canada has ever taken judicial action against a non-profit organization based on that non-profit organization's alleged or suspected involvement in the financing of terrorism? Has Canada ever frozen the assets of any non-profit organizations because of their alleged or suspected links with terrorist groups or terrorist activities?**

To date Canada has not taken any specific 'judicial' action against a non-profit organization based on alleged or suspected involvement in the financing of terrorism. However, as indicated later in this

answer, Canada has taken action to list non-profit organizations, freeze their assets, and prohibit fundraising on their behalf.

As indicated in previous reports (S/2003/403 and S/2001/1209), Canada has legislative and administrative mechanisms in place to deal with organizations and individuals that are involved in the financing of terrorism.

Pursuant to Canada's *United Nations Suppression of Terrorism Regulations*, which were created in response to UNSCR1373 and the attacks of September 11, 2001, Canada has listed several international non-profit organizations in concert with other international partners, independent from the Al-Qaida and Taliban Sanctions Committee.

Listing under Canada's *United Nations Suppression of Terrorism Regulations* implements a 'de facto' freeze on the assets of the listed entity in that according to section 4:

> *No person in Canada and no Canadian outside Canada shall knowingly*
>
> *(a) deal directly or indirectly in any property of a listed person, including funds derived or generated from property owned or controlled directly or indirectly by that person;*
> *(b) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in paragraph (a);*
> *(c) provide any financial or other related service in respect of the property referred to in paragraph (a); or*
> *(d) make any property or any financial or other related service available, directly or indirectly, for the benefit of a listed person.*

A number of non-profit organizations and charities have been listed in Canada, resulting in the corresponding freezing of assets, including:

Al Aqsa Foundation
Holy Land Foundation for Relief and Development
INTERPAL
Somali International Relief Organization
Wafa Humanitarian Organization.

**1.6 Please explain the rules for identifying persons or entities:**

**which maintain a bank account** - When opening an account, financial institutions are required to ascertain the identity of the account holder by referring to an original identification document issued by the federal or a provincial government. Such documents include a passport, birth certificate, driver's license or other similar documents.

When the person is not physically present, the financial institution must confirm that a cheque drawn by the person on an account of a regulated financial institution has cleared, as confirmation that the other financial institution has ascertained the identity of the client.

When the client is an entity, its identity must be ascertained by referring to a document such as the articles of incorporation or a partnership agreement.

**on whose behalf a bank account is maintained (i.e. beneficial owners)-** When the account is opened, financial institutions and intermediaries are required to determine whether the client is acting on behalf of a third party, and obtain information on the third party (name, address, occupation).

There is no requirement to identify the owners, or shareholders when the client is a company. However, Canada is considering options to comply with the FATF standards in this respect.

**who are beneficiaries of transactions conducted by professional intermediaries -** Professional intermediaries, including accountants and real estate agents, are required to ascertain the identity of clients who conduct certain transactions in an amount above a prescribed threshold. The third party information requirements mentioned above also apply.

**who are connected with a financial transaction -** The provisions mentioned above apply. When they conduct certain transactions in an amount above a prescribed threshold, financial institutions or intermediaries are required to determine whether the person conducting the transaction is acting on behalf of a third party, and obtain information on the third party.

**Does Canada impose identification obligations on persons, who operate trusts, to obtain information about the trustees, settlers/grantors and beneficiaries of such a trust? Please outline the procedures in place in Canada enabling foreign law enforcement agencies, or other counter-terrorist entities, to obtain this information in cases where terrorism is suspected.**

**Requirements for trust accounts -** When a trust account is opened, the identity of the settlor must be ascertained. For *inter vivos* trusts (i.e., a trust created and coming into existence during the lifetime of the individual at whose instance it has been created), information on the beneficiaries must also be obtained (name, address, occupation).

**Information sharing -** When FINTRAC has reasonable grounds to suspect that the transaction information it receives is relevant to the investigation or prosecution of a money laundering or terrorist financing offence, it discloses key identifying information to the appropriate law enforcement or intelligence agencies or foreign financial intelligence units (FIUs), pursuant to a Memorandum of Understanding agreed between FINTRAC and the foreign FIU. FINTRAC has concluded information exchange agreements with a number of foreign FIUs and is currently negotiating agreements with additional countries.

**1.7 The CTC would be glad to receive a progress report on Bill C-55.**

Bill C-17, and its previous iterations (Bill C-55 and C-42), was one of several government initiatives in response to the events of September 11, 2001. It proposed to amend several Acts to maximize Canada's capacity to prevent terrorist attacks. Bill C-17 was progressing through Canada's upper legislative chamber, the Senate, but did not complete the process of review and amendment when the Parliamentary session ended on 12 November 2003. When this occurs, a bill is automatically dropped from further consideration unless the next government decides to re-introduce it.

Bill C-17 was intended to increase the Government's capacity to prevent and to respond swiftly to significant threats or terrorist attacks by:

- Authorizing data collection from air carriers and aviation reservation systems for transmission to federal departments and agencies for the purpose of transportation and national security;
- Allowing for the issuance of interim orders in emergency situations;
- Comprehensively implement *The Biological and Toxin Weapons Convention* (BTWC) such that Canada can fulfill its obligations under the international BTWC more fully with respect to domestic law, ensuring that the Convention's ban is respected not only by the Government of Canada, but also by individuals, organizations and institutions in Canada.

The future of this proposed legislation remains to be determined by the Government.

**1.8 Does Canada's counter-terrorist strategy and/or policy targeting (at the national and/or sub-national level) deal with the following forms or aspects of counter-terrorist activity:**

**Criminal investigation and prosecution**

The *Security Offences Act* (SOA) explicitly provides the RCMP with primary responsibility to perform the duties that are assigned to peace officers in relation to "*SOA* section 2 offences" which means any offence or the apprehension of the commission of an offence under any law of Canada where:

a) the alleged offence arises out of conduct constituting a threat to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*; or,

b) the victim of the alleged offence is an internationally protected person within the meaning of section 2 of the *Criminal Code*.

However, these agreements only establish who performs what task(s) in relation to an incident. It should also be noted that *Criminal Code* offences are broader than SOA offences and that all police jurisdictions have responsibilities with the *Criminal Code*.

Refer to previous reports (S/2002/667 and S/2001/1209) for a description of the RCMP's Integrated National Security Enforcement Teams (INSET) that are specifically designed to address issues related to the investigation of criminal activities that pose a threat to the security of Canada.

**Counter-terrorist intelligence (human and technical)**

The *Canadian Security Intelligence Service Act* (section 12) gives the Canadian Security Intelligence Service the authority to "collect, by investigation or otherwise" information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada. According to section 2 (c) of the *Act*, "activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state" constitute a threat to the security of Canada. Together, these sections provide CSIS with the legislative basis to collect counter-terrorist intelligence. Policies and methodologies whereby such intelligence is gathered are confidential.

The *Criminal Code* allows the RCMP to gather information and criminal intelligence by technical means for the expressed purpose of pursuing a criminal prosecution.

Canadian law requires disclosure of information held by prosecutors to defence counsel to ensure a fair trial, but identities and other details of human sources who provide information to law enforcement are protected from disclosure unless the informant actually testifies in court. The relevant law is based on judicial decisions and the case-law has been upheld by the Supreme Court of Canada.

**Special forces operations**

The Department of National Defence maintains specialized military counter-terrorist forces at high readiness to assist law enforcement agencies in resolving terrorist incidents.

While the Canadian Forces counter-terrorist and hostage rescue force, known as Joint Task Force 2, can be employed in a wide range of special operations roles outside of Canada, its primary mission is to provide armed assistance within Canada. The Minister of Public Safety and Emergency Preparedness, who is the lead Minister for dealing with incidents on Canadian soil, must request use of a military force from the Minister of National Defence. The legal provisions for this call-out are contained in the *National Defence Act* and in a specialized executive order created for that purpose, The *Canadian Forces Armed Assistance Directions*.

Regular liaison and training between military counter-terrorist forces, the Royal Canadian Mounted Police and other law enforcement agencies ensures that the Government of Canada is able to provide a seamless, rapid and effective response to terrorism.

As with all units of the Canadian Forces, when operating in Canada, Joint Task Force 2 supports the efforts of civil authorities while responding to a military chain of command. It operates according to agreed national principles for responding to terrorism as laid out in Canada's National Counter Terrorism Plan. This document includes detailed arrangements for the coordination of military and police responses as well as copies of necessary documents related to the handover of specific (and

limited) responsibilities from police to military commanders during a crisis. The civil authorities maintain overall control of all terrorist incidents in Canada.

When military armed assistance is provided to law enforcement agencies in Canada, the military personnel are subject to Canadian laws and regulations and operate under clear rules of engagement that allow for an effective response while maintaining sacrosanct the rule of law.

**Physical protection of potential terrorist targets**

The Department of Public Safety and Emergency Preparedness (which includes the former Office of Critical Infrastructure Protection and Emergency Preparedness) has, among its mandates two key responsibilities: to provide national leadership of a new, modern and comprehensive approach to protecting Canada's critical infrastructure - the key physical and cyber components of the Energy and Utilities, Communications and Information Technology, Finance, Health Care, Food, Water, Transportation, Safety, Government, and Manufacturing; and to be the government's primary agency for ensuring national civil emergency preparedness - for all types of emergencies.

Close cooperation and information sharing within the security and intelligence community is essential, particularly in relation to threat assessments for information operations or "cyber warfare", cyber-sabotage and cyber-crime.

The National Critical Infrastructure Assurance Program (NCIAP) is designed to provide a national framework for collaboration by all levels of government in Canada, private industry and our allies and international partners for the assurance of Canada's critical infrastructure. The NCIAP framework is the necessary starting point to achieve a national approach in the following key areas for CIP:

- Policy/strategy development and business/investment decisions;

- Implementation of business continuity and security plans; and,

- Daily execution and operation of security and risk management programs.

The primary objective of the NCIAP is to ensure that Canada's national critical infrastructure is sufficiently resilient, thereby assuring the continued availability of essential services to Canadians. This objective will not be met through a single action or program, but rather through a series of measures taken by the partnership over time.

**Strategic analysis and forecasting of emerging threats –**

As noted in the 2002 Canadian Security Intelligence Service Public Report, "the primary mandate of CSIS is to collect and analyse information, and to report to and advise the government on threats to the security of Canada." Working in close cooperation with the other operational branches of CSIS, the Research, Analysis and Production Branch (RAP) has the primary responsibility for the analysis, production and distribution of intelligence reports on security intelligence issues of relevance to senior federal decision-makers.

The RAP Branch serves the role of a value-added intermediary between the collection of intelligence and its dissemination to the federal government and law enforcement authorities. RAP analysts utilize their knowledge of regional, national and global trends to assess the quality of collected intelligence and produce insightful security intelligence reports. The Branch produces several types of reports, based upon a broad range of both open-source and classified information, which provide the government with assessments of threats posed by individuals and/or organizations involved in activities prejudicial to the security of Canada.

In addition to the analysis carried out by RAP, in February 2003 the Service established an Integrated National Security Assessments Centre (INSAC), to facilitate collaborative efforts in the analysis and dissemination of intelligence. The INSAC enhances the Service's ability to inform the government of Canada regarding threats to national security.

**Analyses of efficiency of anti-terrorist legislation and relevant amendments**

The analyses of efficiency of relevant anti-terrorist legislation is an on-going process within Canada. The *Anti-terrorism Act* (Bill C-36) is subject to a legislated comprehensive 3-year review. Section 145 of the *Act* states:

> *Within three years after this Act receives royal assent, a comprehensive review of the provisions and operation of this Act shall be undertaken by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.*

The 3-year review of the legislation has a mandate to recommend changes to the legislation, if appropriate.

The *Act* also requires that two new powers available to law enforcement, recognizance with conditions (preventive arrest) and investigative hearings, be subject to annual reporting requirements. Accordingly, the Attorney General of Canada and Solicitor General of Canada are both required to lay before Parliament annual reports on specific uses of these powers. In addition to the Federal-level reports, the Attorneys General of each province in Canada and the Minister responsible for policing in each in Canada are responsible for making public the same information. Copies of the Federal reports for 2002 can be found at:

> http://www.psepc.gc.ca/national_security/publications_e.asp
> http://canada.justice.gc.ca/en/terrorism/annualreport.html

The federal reports for 2003 are being drafted for public release.

**Border and immigration controls**

Canada participates in a number of international fora established for the purpose of exchanging information on illegal migration trends and travel document abuse such as the Immigration Fraud Conference, the Pacific Rim Immigration Intelligence Conference, the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), the G8 and many others. Since 1997, there has been an information sharing arrangement between the US and Canada with respect to suspected terrorists. The *Immigration and Refugee Protection Act* (IRPA) has a number of inadmissibility criteria which have enhanced Canada's ability to control the movement of people across her borders, including security grounds, human rights violations, criminality and organised criminality, as well as misrepresentation.

The following is section 34 of the IRPA, which deals specifically with security concerns:

> *34. (1) A permanent resident or a foreign national is inadmissible on security grounds for*
> *(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;*
> *(b) engaging in or instigating the subversion by force of any government;*
> *(c) engaging in terrorism;*
> *(d) being a danger to the security of Canada;*
> *(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or*
> *(f) being a member of an organisation that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).*

Increased efforts have been made at ports of entry to identify and intercept suspected terrorists attempting to enter Canada. Since September 11, 2001, the Minister of Citizenship and Immigration has introduced measures specifically aimed at further combating terrorism: these measures included the introduction of a more secure identity card for Permanent Residents, initiating security screening for refugees at the outset of the determination process, increased detention capacity, increased deportation capacity, and upgraded security at ports of entry. Additionally, in an effort to deter offences related to the use of fraudulent documents, provisions under IRPA allow for penalties up to a maximum of 14 years.

On December 12, 2003, the Prime Minister announced the creation of the Canada Border Services Agency (CBSA) reporting to the Minister of Public Safety and Emergency Preparedness. The CBSA includes the customs role, portions of immigration enforcement and intelligence and the food inspection agency. The initiation of this new agency will allow for a more co-ordinated approach among partners in managing access to Canada's borders. In addition, it will increase Canada's enforcement capabilities with regard to the prevention of access to Canada by terrorists and other inadmissible foreign nationals.

**Control and prevention of the trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials**

Canada has an extensive national legislation and enforcement system including the *Controlled Drugs and Substance Act* and its Regulations that addresses illicit drug trafficking in the criminal law context, in full compliance with the UN Drug Conventions.

Control over the export of military and strategically sensitive goods (including those used in the design, development and production of chemical and biological weapons) is exercised through the *Export and Import Permits Act* (EIPA) which allows the creation of the Export Control List (ECL), a list of goods and technologies which can only legally be exported if there is a valid export permit. The list is based on the control lists drawn up by the relevant international control regimes: Wassenaar, Nuclear Suppliers Group, Australia Group, Chemical Weapons Convention.

Exporting without a permit can result in fines or the seizure of the goods by the Canadian Customs and Revenue Agency (CCRA) and in cases of deliberate evasion of the law criminal sanctions of up 10 years imprisonment or an unlimited fine.

Canada has enhanced its nuclear security rules to meet the new threats identified since September 11 2001. Strengthened rules implemented by the Canadian Nuclear Safety Commission apply to radioisotopes and nuclear materials that could potentially be used in a dangerous manner and that could endanger the lives of innocent people. Canada also fully supports and endorses efforts by the G8 and the International Atomic Energy Agency to create international standards for the safety and security of radioactive sources. Canada is working toward full implementation of the Code of Conduct on the Safety and Security of Radioactive Sources adapted in September 2003 and we encourage other countries to do the same. On January 21, 2004, Canada officially informed the IAEA of its support for the Code. Every effort should be made to avoid duplication and to establish harmonization of existing initiatives in this area. Any UN effort for an international implementation should focus on supporting the IAEA's work in this area. We strongly believe the IAEA, given its technical expertise and experience, should remain the leading force behind international efforts in this area. Canada also supports efforts underway at the IAEA to develop guidelines for the Import and Export of Radioactive Sources in accordance with Code of Conduct. These efforts actively support the implementation of UNSCR 1373.

**1.9 The CTC would be grateful if Canada could please provide it with information regarding its counter-terrorist efforts including, *inter alia*, an outline of any targeted programs; a list of the agencies involved, and description of any mechanism aimed at ensuring the inter agency coordination in relation to the various areas specified in para 2 and 3 of the Resolution.**

**The recruitment to terrorist groups**

The *Anti-terrorism Act*, among other things, establishes measures to take enforcement action against those responsible for terrorist activities. It also provides law enforcement and national security agencies with new investigative tools.

One integral part of the *Anti-terrorism Act* is the Government's ability to create a list of entities. Under the *Criminal Code*, the Governor in Council may, on the recommendation of the Solicitor General of Canada, establish a list of entities if the Governor in Council is satisfied that there are reasonable grounds to believe that the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or is knowingly acting on behalf of, at the direction of or in association with an entity that has knowingly carried out, attempted to carry out participated in or facilitated a terrorist activity.

It is the policy of the Government of Canada not to comment on how its law enforcement and security intelligence agencies conduct operations; however, below is the list of terrorist entities (as of January 12, 2004) established for the purposes of Part II.1 of the *Criminal Code*:

- Armed Islamic Group;
- Salafist Group for Call and Combat;
- Al Jihad;
- Vanguards of Conquest;
- Al-Gama'a al-Islamiyya ;
- Al Qaida;
- Al-Ittihad Al-Islam;
- Islamic Army of Aden;
- Harakat ul-Mudjahidin;
- Asbat Al Ansar;
- Palestinian Islamic Jihad;
- Jaish-e-Mohammed;
- Hamas;
- Kurdistan Workers Party;
- Aum Shinrikyo;
- Hizballah;
- Abu Nidal Organization;
- Abu Sayyaf Group;
- Sendero Luminoso;
- Jemaah Islamiyyah;
- Islamic Movement of Uzbekistan ;
- Euskadi Ta Askatasuna;
- Al-Aqsa Martyrs' Brigade ;
- Fuzeras Armadas Revolucionnarias de Colombia ;
- Autodefensas Unidas de Colombia ;
- Ejército de Liberación ;
- Babbar Khalsa;
- Babbar Khalsa International;
- International Sikh Youth Federation;

- Lahkar-e-Tayyivba;
- Lashkar-e-Jhangvi;
- Palestine Liberation Front;
- Popular Front for the Liberation of Palestine; and,
- Popular Front for the Liberation of Palestine – General Command.

A complete listing of those on the *Criminal Code* list can be seen at:
http://www.psepc.gc.ca/national_security/counter-terrorism/AntiTerrorism_e.asp
http://www.psepc-sppcc.gc.ca/national_security/counter-terrorism/Entities_f.asp

The *Anti-terrorism Act* also introduced specific offences related to:

- Financing of terrorism (sections 83.02, 83.03 and 83.04 of the *Criminal Code*);
- Dealing in the assets of a listed entity and not reporting frozen assets to authorities (sections 83.08, 83.1 and 83.11 of the *Criminal Code*);
- Participating in the activities of a terrorist group (section 83.18 of the *Criminal Code*);
- Facilitating a terrorist activity (section 83.19 of the *Criminal Code*);
- Instructing the carrying out of a terrorist activity (sections 83.21 and 83.22 of the *Criminal Code of Canada*); and,

Harbouring or concealing a terrorist (section 83.23 of the *Criminal Code*).

**The tracing of links between criminal activity (in particular, drug trafficking and terrorism)**

Canada has a number of mechanisms and structures in place to ensure inter-agency cooperation between authorities responsible for curbing drug trafficking, financial tracking and security. There are existing intelligence and security, and law enforcement agreements and memoranda of understanding between a number of Canadian agencies including CBSA, CSIS, RCMP and FINTRAC as well as international agreements relating to border security.

Please refer to previous report (S/2002/667) for a description of specific inter-agency coordination/operational mechanisms such as the Enforcement Information Index (EII), Integrated National Security Enforcement Teams (INSETS), Integrated Justice Information Initiative (IJII), Canada Public Safety Network (CPSN) and Integrated Border Enforcement Teams (IBETS).

**The denial of safe havens to terrorists, as well as the denial of forms of passive or active support for terrorists or terrorists groups, including *inter alia*; logistical support for terrorists (e.g. the use of global information infrastructure)**

It is the role of both Citizenship & Immigration Canada (CIC) and the CBSA to ensure, in co-operation with other partners, that foreign nationals wishing to enter Canada meet the admissibility criteria as set out in IRPA. For example, persons applying for Permanent Resident or Convention Refugee status are security screened, as are some temporary residents (visitors).

CSIS, an important partner for both CIC and the CBSA, provides input to a database which alerts Immigration and Customs officers at ports of entry of threats to national security posed by suspected and known terrorists seeking admission to Canada. CSIS information enables Canadian officials to refuse applications from individuals suspected of involvement in terrorist activity, effectively barring their entry into Canada.

The CBSA plays a leading role in protecting the integrity of Canada's immigration and refugee system, and in denying safe have to persons suspected of terrorism. The CBSA identifies, detains, and removes persons who are ineligible to remain in Canada for security or criminality reasons (including terrorism) or those who have been determined not to be Convention refugees.

Canada has initiated procedures whereby airline passenger manifest information is electronically transmitted to the Ports of Entry in advance of the arrival of the flight. This provides the CBSA officials with the opportunity to identify individuals who may warrant further examination upon arrival.

The CBSA and the United States Department of Homeland Security have a co-ordinated approach to border management by sharing passenger flight information, within the limits of their respective privacy legislation. The National Risk Assessment Centre (NRAC) has been established to allow Canada and the United States to detect and interdict high-risk travellers destined to either country. The NRAC became operational in January of 2004.

**1.10 Please indicate which special investigative techniques can be used in Canada in cases of terrorism (e.g. interception of communications; electronic surveillance; observation; undercover operations; controlled delivery; "pseudo-purchases" or electronic bugging of private of public premises etc.). Please indicate whether these techniques may 1) only be applied against suspects; 2) only be applied if approved by a court.**

Canadian law-enforcement and security agencies have access to a full range of special investigative techniques in terrorism-related cases, depending on the facts of each case, the type of investigation involved, and the agency conducting the investigation. Available techniques include electronic surveillance, search and seizure, personal or "undercover" surveillance, use of anonymous informants, and controlled delivery or other conduct by investigators that would in other circumstances constitute a criminal offence. Specific legal authorities are found in a number of statutes and in case law, but the principal provisions are the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* (Part VI dealing with electronic surveillance, Part XV, dealing with search and seizure, and sections 25-25.4 dealing with justification of otherwise illegal acts for investigative purposes). With the exception of electronic surveillance in criminal cases (below) all of these investigative powers may be used in cooperation with another State pursuant to a mutual legal assistance request in criminal matters or another agreement or arrangement in security matters.

The use of special investigative techniques in Canada is circumscribed by substantive and procedural safeguards. Different standards apply depending on whether the investigation is conducted by a law enforcement agency for the purposes of prosecuting a criminal or other offence, or by a security

agency for national security purposes, and within the general legal frameworks, vary depending on the technique to be used and the circumstances in which it will be used. Underlying all of the specific legal authorities and safeguards is the *Canadian Charter of Rights and Freedoms*. This includes the right of everyone in Canada to be secure against unreasonable search or seizure, which in the case of electronic surveillance and conventional search and seizure cases, requires that operations meet basic standards for justification. These are that the search or surveillance operation be authorized in advance by an independent judicial officer who, where appropriate, may set limits on what may be done and how it may be done. There is a limited exception to this basic rule for emergency or "exigent" circumstances. Other rights, particularly those providing for fairness in criminal proceedings, require disclosure of potentially sensitive information to accused persons, but the ultimate remedy in such cases is not disclosure but the discontinuation of the prosecution where the information cannot be disclosed.

**Electronic surveillance** - In Canada, the term "interception of private communications" includes all forms of electronic surveillance whether the communication is intercepted in transit through a communications system or network or by the use of electronic means to eavesdrop on a fixed conversation. If a reasonable expectation of privacy exists on the part of the communicants, then interception is a criminal offence unless an exception is provided by law.

Part VI of the *Criminal Code* allows for electronic surveillance to investigate criminal offences listed in the legislation, provided that prior judicial authorization is obtained. The list of eligible offences includes all serious criminal offences and all of the offences designated as "terrorist activities" in the legislation. Judicial authorizations may only be issued to specially-trained officers, and limits on duration and physical scope are established both in the legislation and by the court. There is a requirement that electronic surveillance only be used as a last resort when other means have failed or are unlikely to succeed for ordinary criminal offences, but this does not apply offences involving a criminal organization or a terrorism offence. The normal maximum period for which electronic surveillance can be authorized is 60 days, but in the case of a terrorism offence, this is increased to one year, and in both cases judges may renew the authorization as necessary where circumstances warrant. Short-term authorizations can also be obtained quickly, in emergency or "exigent" circumstances.

The *Canadian Security Intelligence Service Act* provides separate powers to conduct electronic surveillance. Warrants under the *Act* must also be obtained from a judge, but are obtainable on the more general basis of an investigation of threats to the security of Canada or the performance of other duties and functions described in the *Act*. Only designated judges of the Federal Court of Canada may issue warrants under the *Act*, and unlike *Criminal Code* procedures, warrants under the *Act* may deal with either electronic surveillance, search and seizure, or both. The period for which a warrant to intercept communications can be issued is 60 days or one year, depending on the nature of the investigation, and can be renewed where circumstances warrant. The Communications Security Establishment, which gathers signals intelligence from the global information infrastructure and advises the Government of Canada on communications security, also has electronic surveillance powers.

Electronic surveillance under both the *Criminal Code* and the *Canadian Security Intelligence Service Act* can be directed at known persons or unknown persons, provided that there is a sufficient degree of specificity in the information provided to the issuing judge and included in the warrant or authorization to limit the scope of the surveillance. It may also be directed at any place, provided that the place is described with sufficient specificity, including private "dwelling houses" and more public places. Additional safeguards are applied where the communications to be intercepted under the *Criminal Code* may be privileged solicitor-client communications. Depending on circumstances, if a place is sufficiently public or if communicants are notified in advance, there may be no expectation of privacy, and hence no legal restrictions on recording communications. Electronic surveillance under the *Criminal Code* is limited to the investigation of Canadian offences listed in the *Code*. This includes terrorist and other offences committed on Canadian aircraft or vessels, or committed elsewhere but deemed to have been committed in Canada, but does not include mutual legal assistance requests relating to offences committed in other countries. Electronic surveillance by the Canadian Security Intelligence Service is based on the investigation of threats to the security of Canada or the collection of intelligence or information and this may involve cooperation with other States where appropriate. Provisions under both statutes allow for measures to keep confidential the identities of informants (see below) and other sensitive information used by the judge in issuing the authorization or warrant.

**Search and seizure** - Canadian law enforcement agencies have powers to search for and seize anything that may be evidence in a criminal case, and a range of other specific items, including proceeds of crime and other offence-related property, weapons, narcotic drugs and psychotropic substances, various contraband items, and nuclear materials. General search and seizure powers relating to evidence are contained in the *Criminal Code*, with subject-specific powers in the *Criminal Code* and other statutes. Prior judicial approval based on appropriate grounds and setting out what may be search for and seized, where and other limits is normally required, but there are limited powers to search without a warrant in emergency or exigent circumstances. The Canadian Security and Intelligence Service may search for and remove or return, examine, take extracts from, make copies of, or record in any other manner, any information, record, document or thing. This may be done based on the same justification and subject to the same limitations as for electronic surveillance.

**Use of undercover officers** - There is no legal restriction on the conduct of law enforcement or security operations in plain-clothes or out of uniform, or on the ability of officers to pretend to be involved in unlawful activities for the purpose of gathering intelligence or evidence. Individual agencies have internal orders or guidelines governing the conduct of specific types of operations, but these do not restrict overall use of the techniques.

**Anonymity and protection of informant** - Canadian law enforcement and security agencies are able to preserve the anonymity of informants where necessary. This is done using administrative means and generally only becomes a legal issue where the informant's information is used as the basis for obtaining a search warrant or authorization to conduct electronic surveillance. In such cases, the normal rule is that legal counsel for the defence would have a right to review sworn documents and cross-examine the principal informant, who is usually an investigator, but there is no right to cross-examine a confidential informant. Where anonymity is necessary, documents used to obtain general

search warrants under the *Criminal Code* can be ordered sealed by a court. Documents used to obtain an electronic surveillance authorization under the *Criminal Code* are sealed, and if given to defence counsel, are edited by a judge to remove the identities of confidential informants, as well as any other information that might identify them. Investigative techniques conducted under warrants pursuant to the *Canadian Security Intelligence Act* are not used in criminal cases and the question of access by defence counsel does not arise. Warrants are issued by designated judges of the Federal Court of Canada and are subject to independent confidential review only. All of the measures whereby the identity of informants and other information can be shielded from disclosure are subject to the rights guaranteed to persons accused of criminal offences. Where lack of access to sensitive information amounts to a deprivation of rights under *The Canadian Charter of Rights and Freedoms* and this deprivation is not done in accordance with the principles of fundamental justice, remedies may include a stay of prosecution.

**Use of controlled delivery and "pseudo-offences"** - Canada's *Criminal Code* was amended in 2001 to clarify that law enforcement officers and others may engage in conduct that would otherwise constitute a criminal offence for investigative purposes, provided certain conditions are met. Actions such as controlled delivery of illicit substances may be done only by officers who are trained and designated, and operations must be approved in advance by a senior official. The exception operates as a justification and does not convey complete immunity: actions taken must be reasonable and proportional, having regard to the offence being investigated; the exception does not extend to the commission of offences causing death, sexual offences or the obstruction of justice, and a separate regime exists for narcotics offences. The justification provision extends to any "public officer" who has been designated, which may include officers of federal, provincial and municipal police forces, the Canadian Security Intelligence Service, and other departments or agencies of the federal government or a provincial government with investigative or law enforcement mandates. The justification also extends to actions by persons who are not "public officers", such as civilian informants, on a more limited basis. The person taking the action must reasonably believe that he or she has been directed to do the act by a public officer who has the authority to do so, and the act is done for the purposes of the public officer's law enforcement duties.

**Cross-border pursuits** - Canadian legislation does not provide extraterritorial powers for Canadian law-enforcement personnel in pursuits into other countries or powers or protections for foreign personnel entering Canada. "Hot-pursuit" scenarios do occur on the border between Canada and the United States, and these are dealt with in accordance with arrangements between the law-enforcement authorities involved and, if necessary, prosecutorial discretion. Should an arrest be necessary to prevent flight or further harm, a foreign law-enforcement officer who has crossed into Canada would have the same powers as a Canadian civilian. A person found committing a serious offence or who is being pursued may be arrested and reasonable force may be used, provided that the person arrested is turned over to a Canadian peace officer forthwith.

**Entrapment** - Canadian criminal investigators are permitted to mislead or deceive suspects, but entrapment will give rise to a valid defence to criminal charges. In Canadian law, entrapment occurs when investigators actively encourage or induce a suspect to commit an offence, or merely provide an

opportunity to commit the offence and there is no reasonable suspicion of improper motive or criminality on the part of the suspect.

Law enforcement and security and intelligence agencies have a variety of special investigative techniques available to them through legislation. The granting of all the special investigative powers must be sanctioned by the judiciary.

It is the policy of the Government of Canada not to comment on how its law enforcement and security intelligence agencies conduct operations or use any of the special investigative techniques available to them through legislation.

**1.11 With a view to bringing terrorist and their supporters to justice, please indicate whether Canada has taken measures to protect vulnerable targets in terrorist cases, for example, to protect victims, witnesses or other persons assisting the court, judges and prosecutors. Please describe the legal and administrative provisions that Canada has put in place to ensure this protection. Could Canada please outline whether these measures can be utilised in cooperation with or at the request of another State.**

Under Canada's *Witness protection Program Act*, a full range of measures needed to protect vulnerable persons is available. These provisions are equally applicable to those whose circumstances involve terrorism-related matters as to proceedings relating to any other offence. Anyone who participates or has agreed to participate in a criminal proceeding may be protected, as well as others, such as family members, likely to be in danger. The *Act* also provides for reciprocal agreements or arrangements with other countries under which subjects in Canada may be relocated abroad and those in other countries may be relocated in Canada. Canada considers foreign requests under this provision on a case-by-case basis. The *Act* establishes the conditions needed for formal, long-term protection programmes, as well as emergency measures pending the application of the long-term provisions. It should also be noted that for most of the immediate measures needed to protect witnesses, other participants or others who may be in danger, no specific legal authority is required. Canadian law-enforcement agencies can and do take appropriate measures where deemed necessary.

Canada's Federal Witness Protection Program is administered by the RCMP. Provincial and municipal agencies also maintain witness protection programs, with federal assistance in obtaining documents where necessary. The RCMP works with other federal departments in order to facilitate the obtaining federal documents for witnesses who have undergone secure changes of identity. Witnesses are usually entered into the program upon completion of the investigation, at which time the identity of the witness will usually become known to the accused as part of legally-required pre-trial disclosure. However, should a threat be identified at any other time, a witness can at that time be entered into the program, either under emergency provisions or the regular admittance procedures. The 2001 *Anti-terrorism Act* amendments allow for non-disclosure of sensitive or potentially injurious information, which would include in appropriate circumstances information that would identify an informant or witness. Where the witness actually testifies, it is not possible to do so anonymously, and in cases where disclosure of information is blocked, the court will fashion a remedy to ensure that the accused's right to a fair trial is protected.

Protective measures are based on a threat assessment and can include personal protection and the removal of the subject from the threat area until the threat subsides. In more serious cases, the subject is relocated and provided with a change of identity. The relocation includes handler support at the relocation site. Assistance with obtaining secure accommodations and counselling are available where necessary.

**1.12 The CTC would be grateful for an outline of Canadian legal procedures and administrative mechanisms with a view to ensuring adequate cooperation and information sharing among the different government agencies that may be involved in the investigation of terrorist activities, with particular regard to the financing of terrorism. Do the legal provision in place authorize the administrative authorities to share both public and non-public information concerning counter-terrorism with their domestic and foreign counterparts?**

Canada has undertaken to establish administrative procedures for the sharing of information in relation to terrorist financing initiatives. Law enforcement and security and intelligence agencies have existing mechanisms, both legislative and administrative, for sharing information domestically and with international partners.

Originally established to facilitate the process for listing entities and freezing assets, an interdepartmental committee comprised of numerous departments and agencies exists and meets on a regular basis that has expanded its role to include the sharing of information and strategies related to the listing of entities and freezing of assets, as well as identifying policy and program gaps in relation to efforts to combat terrorist financing.

Canada is also an active member in various international bodies and organizations that address the issue of terrorist financing. In order to ensure a coordinated national approach in these various fora, interdepartmental meetings and consultations occur regularly among delegation members.

Under prescribed conditions, FINTRAC may disclose designated information derived from its analysis of the reports received and other information received or collected such as through both public and governmental databases. (Designated information can be categorized as 1) identifying information about the individual or company involved (including account information), 2) details of the transactions, and 3) details about the institutions where the transactions took place.)

- The Centre must disclose to the appropriate police force when it has reasonable grounds to suspect that this information would be relevant to the investigation or prosecution of a money laundering or a terrorist financing offence.
- The Centre must disclose to CSIS when it has reasonable grounds to suspect that the information would be relevant to threats to the security of Canada.

Once the threshold of reasonable grounds to suspect money laundering or terrorist financing is met, FINTRAC must also disclose such designated information to:

- The Canada Customs and Revenue Agency (CCRA), when the information is also determined to be relevant to an offence of evading or attempting to evade federal taxes or duties;
- Citizenship and Immigration Canada (CIC)*, when the information is also determined to be relevant to certain provisions of the *Immigration and Refugee Protection Act*; and
- Foreign FIUs with which it has concluded a memorandum of understanding (MOU) providing for such exchange of information. FINTRAC may also query FIUs for additional information where an MOU is in place. FINTRAC has concluded MOUs with the United States, United Kingdom, Mexico, Belgium, Australia, Barbados and Italy.

Once information is disclosed by FINTRAC, it is no longer subject to the requirements of the PCMLTFA, but would still be subject to any legal restrictions applicable to the agency or department to which it was disclosed, including the Privacy Act and, where applicable, the Security of Information Act.

Canada's public administration includes a number of departments and agencies that are involved in the prevention and investigation of terrorism and related subject-matter, at the federal, provincial and local levels of government. These include law enforcement and national security agencies, federal and provincial attorneys-general, and federal and/or provincial departments responsible for health, transportation, immigration and other matters. Within this structure a number of different arrangements exist for the consultation and sharing of information with other relevant departments. These range from committees formally established by legislation or delegated legislative powers, to informal and ad-hoc arrangements established to share information or cooperate as necessary on a case-by-case basis. Interdepartmental committees and working groups include a number of federal-provincial bodies dealing with both policy and operational subject-matter.

In Canadian law, information that is held by any government agency falls into one of three basic categories. Public information, which comes from open sources such as the mass-media and public statements of officials, is widely disseminated and not subject to legal restrictions. The other two categories, personal information and secure information, involve varying degrees of sensitivity and are subject to legal provisions which prohibit publication or dissemination and establish exceptions for a range of circumstance in which they can be shared. Within this general framework, a number of specific non-disclosure provisions exist in Canadian statutes. These establish rules governing specific types of information, establishing to whom it may be disclosed and under what circumstances, but most are unlikely to apply in terrorism-related cases.

Regarding public information, most government departments have open Internet web-sites from which information about their mandates and initiatives can be reviewed and downloaded, including the RCMP and CSIS. These are used to disseminate public research, consult with Canadians and provide basic information about the agencies, what they do, and how they can be contacted. Both the RCMP and CSIS websites also provide information about how to contact their respective independent review bodies in order to register concerns or file specific complaints. All government departments also have media-relations offices established for the purpose of transmitting information to the mass-media and general Public Communications.

Personal information, which consists of information about identifiable individuals held by government institutions, raises privacy issues and is subject to the federal *Privacy Act*, or similar regimes that exist in the provinces and territories. Such information can be gathered and retained by an agency for specific purposes, but can only be used for other purposes or disclosed to other agencies with the consent of the subject, or in circumstances specified in the *Act*. Circumstances where information can be shared include: information disclosed on the order of a court; information disclosed to an investigative body or for legal proceedings; and information disclosed pursuant to an agreement or arrangement between the Government of Canada and a province, another country, or an intergovernmental organization "...for the purpose of administering or enforcing any law or carrying out a lawful investigation".

Secure information, the disclosure of which would be prejudicial to the safety or essential interests of the State, is further protected by the *Security of Information Act*. Sharing of this information can be authorized and takes place in appropriate circumstances, including terrorism-related cases. Federal laws governing specific agencies in some cases then establish more specific frameworks for information practices that apply only to the agencies involved and the information in their possession. The rules governing the RCMP, CSIS, and the FINTRAC are relevant in this context.

Information gathered and held by the RCMP is dealt with in accordance with the provisions of the *Privacy Act*. Information gathered and held by CSIS is subject to section 19 of the *Canadian Security Intelligence Service Act*, which prohibits disclosure except under specific circumstances, which are specified in the *Act*. Information can be disclosed for the purposes of the performance of CSIS' duties and functions under the *Act*. Information can also be disclosed for other purposes including the investigation and prosecution of offences, matters relating to foreign relations or national defence. It may also be disclosed more broadly within the public service where such disclosure is determined by the Solicitor General to be essential in the public interest and where the interest in such disclosure clearly outweighs any consequent invasion of privacy. Some research studies do not raise privacy or security issues and an extensive collection of these studies on a number of topics, including terrorism, are disseminated by CSIS on its website.

Canada's constitutional bill of rights, the *Canadian Charter of Rights and Freedoms*, also establishes privacy rights that regulate the gathering and use of information and with whom and for what purposes it may be shared. Exact standards depend to a large degree on specific circumstances, but generally, if there is a reasonable expectation of privacy for information, there will be restrictions on how it must be gathered, such as requirements that activities such as electronic surveillance and search and seizure must be authorized by an independent judicial officer in advance. There will also be limits on disclosure and use, and in some cases, information gathered for one justified purpose may not be further used or disclosed for other purposes, or may be subject to requirements for further review of other safeguards before this is done. These must be prescribed by law. Under Canada's anti-terrorism legislation, for example, individuals may be ordered by a court to appear and disclose information at investigative hearings, if there are reasonable grounds to believe that a terrorism offence has been or will be committed, but this process is not permitted for ordinary criminal investigations, and any information generated under these circumstances cannot later be used in a

criminal prosecution against the person compelled to provide it. The legislative and administrative frameworks for sharing information in Canada are consistent with these basic *Charter* principles, and new legislative proposals are reviewed for consistency before they are introduced in Parliament. The sharing or disclosure of information in exigent (emergency) circumstances is also provided for by Canadian law.

Modern information technologies play a significant and increasing role in information-sharing in Canada. As noted, most Canadian government departments and agencies now maintain open Internet web-sites. These provide a means of widely disseminating information, and most also provide information about how the department or agency itself, and its independent oversight body, if any, can be contacted. Some also provide for return communication by electronic mail, using appropriate encryption technologies to protect privacy and security. As Internet security technologies improve, secure web-sites and electronic mail networks are sometimes used to share more sensitive information. One such major Canadian network is the Canadian Police Information Centre (CPIC), which has been operated since 1972 by the Royal Canadian Mounted Police. It maintains a secure database containing law-enforcement information that is accessible by all Canadian police agencies and other approved federal and provincial law-enforcement agencies. Its databases can be queried for information about persons of interest, vehicles and other information, new information can be added to the system, and participants can exchange information bilaterally in a secure environment. CPIC is presently undergoing a major modernization programme to expand its capabilities and include non-police agencies that require the information it contains, including agencies responsible for customs and immigration matters.

Other more narrowly-focused databases, websites and other facilities exist, employing appropriate security measures, for sharing information among departments, agencies, or individual officials who need the information. The majority of these allow users to both send and receive information. Many of them, including CPIC, are accessible to appropriate officials at the federal, provincial, and municipal levels, and some are accessible to appropriate foreign law enforcement agencies or other authorities.

**Canadian legal procedures and administrative mechanisms relating to co-operation and information-sharing between Canadian government agencies involved in the investigation of terrorist activities and their foreign counterparts, with particular regard to the financing of terrorism -**

The sharing of information with public officials of other countries is generally governed by the same legal principles protecting privacy and regulating disclosure as domestic information. In addition, it is regulated by international legal instruments to which Canada is a State Party, and by the discretionary application of the principles of state sovereignty, essential interests and reciprocity. Treaties are not self-executing in Canada and must therefore be implemented by appropriate legislative and administrative measures. Canada is a State Party to the United Nations Convention against Transnational Organized Crime and all of the 12 international legal instruments against terrorism, and shares information as required under the frameworks set out in those treaties.

As noted, some web-sites and other communications facilities established by Canada are made accessible to foreign agencies, and Canadian officials have and use access to similar sites established by other countries, subject to the need for appropriate security measures. A major concern for Canada is the security of the border between Canada and the United States of America and travel between the two countries, and numerous bilateral mechanisms have been established to facilitate information-sharing in that context. Information-sharing initiatives are established with other countries and regional or other intergovernmental organizations, including the International Criminal Police Organization (INTERPOL) as necessary and appropriate.

**Canadian legal procedures and administrative mechanisms governing the sharing of public and non-public information -**

As noted above, information held by the Government of Canada is only restricted if it is personal information within the ambit of the *Privacy Act*, secure information within the ambit of the *Security of Information Act*, or personal information in which there is a reasonable expectation of privacy under the *Canadian Charter of Rights and Freedoms*. Subject to specific legal non-disclosure rules, other information would generally be considered as public information and there would be no restriction on its disclosure or dissemination.

**1.13 The CTC notes from sub-section 3.74 of Bill C36 that Canadian courts would not appear to have jurisdiction over a foreign national who is accused of having committed an act of terrorism abroad when he was present in Canada (but not resident) in Canada. Please outline how Canada would deal with a foreign national who is present in Canada and is suspected of having committed a terrorist act abroad, in light of the prosecute or extradite" (*aut dedere aut judicare*) principle of international law.**

Canada has established the necessary jurisdiction in respect of those offences for which it is required to implement the principle of *aut dedere aut judicare* by its obligations under international legal instruments, including the relevant conventions and protocols against terrorism. It is Canada's position that, generally, extended or universal jurisdiction should only be applied in accordance with international law as set out in the relevant treaties, and the legislation therefore only assumes jurisdiction to the extent required for each offence by each international instrument.

As a general rule, the specific offence provisions are added to the appropriate chapters of the *Criminal Code*, depending on the type of conduct being criminalized as required by each treaty. The jurisdiction to prosecute persons accused of these offences where Canada is obliged to prosecute or extradite and does not extradite is found for each such offence in the appropriate subsection of section 7 of the *Criminal Code*. Each subsection establishes the jurisdiction required by the international legal instrument concerned. In the case of terrorism offences, these are the offences listed in sub-paragraph (a) of the definition of "terrorist activity" in *Criminal Code* subsection 83.01(1). These offences are excluded from the general jurisdictional provision found in section 7, subsection 3.74 of the *Criminal Code*, which applies only in respect of offences that are not the subject of any international legal instrument, and for which the *aut dedere aut judicare* obligations do not apply. This is because the relevant jurisdictional rules are found in section 7, subsection (3.73) instead.

In the case of an offence enacted pursuant to the *International Convention for the Suppression of the Financing of Terrorism*, for example, the offence itself is found in *Criminal Code* section 83.02. It is listed as a form of "terrorist activity" in section 83.01, subparagraph (1)(a)(x), which excludes it from section 7, subsection 3.74. The correct jurisdictional provision, section 7, subsection (3.73), establishes jurisdiction in a series of listed circumstances, including, under subparagraph (d), "...the person who commits the act or omission is, after its commission, present in Canada." Similar provisions implement the jurisdictional requirements established by the other conventions and protocols against terrorism.

**1.14 Please indicate whether Canada has taken measures to establish the civil, criminal or administrative liability of legal persons for criminal offences, in particular offences related to terrorist activities? Please specify and provide an outline of the relevant legal documentation. Is it possible to assign liability to a legal person, in cases where no natural person has been identified or convicted? In this regard could Canada provide the CTC with statistics of the number of cases where sanctions, for the provision of support to terrorists or terrorist organizations, were imposed on: non-profit organizations; financial and non-financial institutions; and other financial intermediaries.**

Canada has not prosecuted a non-profit organization for providing support to terrorists or terrorist organizations.

Section 2 of Canada's *Criminal Code* provides that the terms "every one", "person", "owner" and similar expressions include a range of legal persons. This means that legal persons are subject to full liability for all criminal offences in which these basic terms are used. The effect is that they are fully subject to all criminal offences in Canada unless the specific enactment that establishes the offence provides otherwise. They are fully subject to liability for all of the offences directed specifically at terrorist activities, as well as all offences of general application, such as homicide offences, which might arise in relation to terrorist activities. If convicted, they are subject to punishment in the form of a fine.

In 2003, the relevant *Criminal Code* provisions were amended to provide a clearer and more comprehensive provision governing the scope of criminal liability and the types of organization to which it extends. The changes specifically include a number of additional types of organization, whether operated on a profit-making or non-profit basis. The amendments are contained in Bill C-45 (now S.C. 2003, c.21), *An Act to amend the Criminal Code (criminal liability of organizations)*.

As amended, the relevant *Criminal Code* provisions are as follow.

Section 2 (definitions) was amended to read (in part):

*In this Act,*

*``every one", ``person" and ``owner", and similar expressions, include Her Majesty and an organization;*

*``organization" means*
*(a) a public body, body corporate, society, company, firm, partnership, trade union or municipality, or*
*(b) an association of persons that*
*(i) is created for a common purpose,*
*(ii) has an operational structure, and*
*(iii) holds itself out to the public as an association of persons;*

New sections 22.1 and 22.2 were enacted to detail the rules for attributing criminal liability to legal persons for offences of criminal negligence and offences requiring subjective intent, respectively:

***22.1*** *In respect of an offence that requires the prosecution to prove negligence, an organization is a party to the offence if*
*(a) acting within the scope of their authority*
*(i) one of its representatives is a party to the offence, or*
*(ii) two or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct of only one representative, that representative would have been a party to the offence; and*
*(b) the senior officer who is responsible for the aspect of the organization's activities that is relevant to the offence departs - or the senior officers, collectively, depart - markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence.*

***22.2*** *In respect of an offence that requires the prosecution to prove fault - other than negligence - an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers*
*(a) acting within the scope of their authority, is a party to the offence;*
*(b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or*
*(c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.*

The new legislation also increases the amount of fine available for an organization convicted of a summary conviction offence. Fines for indictable offences have no upper limit. There is also provision for probation with conditions for an organization.

Whether a legal person or those who act on its behalf are actually held liable is a question of fact to be adjudicated on a case by case basis. There is no legal bar to a legal person and a natural person being convicted for the same offence, and both or all parties would be convicted where the trier of fact finds against each of the accused on all of the essential elements of the offence involved. A legal person

can also be convicted in a case where no natural person is prosecuted, or where a natural person is prosecuted but not convicted of the same offence. The authorities on these issues are primarily case law, based on English common-law and sections 2, 21, 22.1 and 22.2 of the *Criminal Code*, as amended. The leading case on corporate liability generally is *R. v. Canadian Dredge and Dock Co.* [1985] 1 S.C.R. 662 (Supreme Court of Canada). The leading case dealing with the liability of both natural and legal persons in the same case is *R. v. Fell* (1981), 64 C.C.C. (2nd) 456, 131 D.L.R. (3rd) 105 (Ontario Court of Appeal).

Legal persons in Canada are subject to liability for many administrative and regulatory offences, including a number that enforce banking, financial and corporate governance requirements outside of the scope of the criminal law. Generally, these carry lesser punishments, and require a lower standard of *mens rea* than do criminal offences, such as requirements that regulated entities not be negligent or requirements that due diligence be exercised in meeting prescribed legal obligations.

Regarding civil liability, there is no civil liability in tort for criminal offences relating specifically to terrorism. However, civil actions framed in tort may be brought to deal with terrorism activities. For example, bribery may be indicative of the tort of conspiracy.[1] Other torts may also provide the basis for a civil action to deal with terrorism, such as the tort of unlawful interference with an economic interest or the tort of deceit.

**1.15 Could Canada please provide the CTC with information relating to the number of persons prosecuted for terrorist activities; the financing of terrorist activities; recruiting to terrorist organizations; and providing or inviting support for terrorists or terrorist organizations.**

Canada's system for recording criminal justice statistics is based on classification according to the offences prescribed by Canadian law, and until the adoption of the offences contained in the *Anti-terrorism Act* in December 2001, no Canadian criminal offences contained terrorism per se as an element. Terrorism-related categories were automatically incorporated following adoption of the Act, but as of 31 December 2003, no prosecutions had been recorded by the Canadian Centre for Justice Statistics, and officials are not aware of any ongoing prosecutions. A definitive response on this point would require further consultation with provincial Attorneys-General, who have concurrent jurisdiction with the federal Attorney-General over these offences, but it is unlikely that any such prosecutions are ongoing or would be undertaken by a province without consultation with federal officials.

Prior to the adoption of the 2001 offences, terrorism-related prosecutions in Canada, when they occurred, would have been dealt with as the appropriate substantive offences, such as murder or hostage-taking. One major homicide prosecution, arising out of the destruction of an Air-India flight from Canada to India via the United Kingdom and the deaths of 329 persons, in June 1985, was

[1] In Canada, a conspiracy is actionable in tort where two or more persons 1) combine to act unlawfully with the predominating purpose of injuring the plaintiff, 2) combine lawfully with the predominating purpose of injuring the plaintiff or, 3) combine to act unlawfully and their conduct is directed towards the plaintiff and the likelihood of injury to the plaintiff is known or should be known to the defendants.

commenced in 2003 and was still before the courts as of 31 December 2003. Officials are aware of a very small number of other incidents since 1980 where offences were committed for terrorist or political motives. From 1991-1996, the Canadian Centre for Justice Statistics included the category "terrorism-related" in its survey protocols for homicide incidents, but no incidents were recorded, and the classification was abandoned as not statistically relevant. Since then, it has sought information about "terrorism, political cause" as a form of motive, and only one such incident was recorded between 1997-2002, the most recent year for which statistics are available (Not all Canadian provinces reported on this question, but the data is believed to represent about 80% of the total.)

**1.16 Could Canada please provide the CTC with an outline of the procedure used to enlist an organization as a terrorist organization? Could Canada provide data on the number of terrorist organizations that it has so listed, in particular foreign terrorist organizations other than those listed by the Security Council? How long does it take to list a terrorist organization at the request of or based on the information of another State? How many persons (legal or physical) have been prosecuted for inviting support (including recruitment for) proscribed organizations and other terrorist groups of organizations?**

The *United Nations Suppression of Terrorism Regulations* allow Canada's executive authority, the Governor in Council, to establish a list of entities where there are reasonable grounds to believe a person (individual or entity) has carried out, attempted to carry out, participated in or facilitated the carrying out of a terrorist activity, or is controlled directly or indirectly by such a person, or is acting on behalf of, or at the direction of, or in association with such a person. Information considered during the Governor in Council process is protected from disclosure.

The administrative process for preparing and proposing persons for listing considerations to the Governor in Council involves the production of a report by security intelligence designed to meet the test for listing established in the Regulations and appropriate consultation prior to the Governor in Council consideration. As part of the international cooperation against terrorism, the process may be initiated when a specific request is made to Canada by another State to take action to freeze the assets of a specific entity. In such a case, the information provided to Canada by another State in support of a listing is reviewed and assessed by the appropriate security intelligence agency that also conducts its own investigation. Canada will advise the requesting State if the information provided is insufficient to meet the standard for listing established in the Regulations. Canada seeks to list promptly upon receipt of a request by another State if the standard for listing is met in order to block the transfer of assets to Canada from other States that have taken action against an entity. The length of time for a listing can vary depending on the urgency of the matter and the information provided to Canada in support of a listing. Efforts are made to list in concert with our international partners when possible.

The *UN Suppression of Terrorism Regulations* also incorporate by reference the foreign terrorist organizations listed by the Security Council. There are currently 56 persons listed, both individuals and entities, that are not listed by the Al Qaida and Taliban Sanctions Committee. Of these, 19 are also listed under Criminal Code.

Section 83.05 of the *Criminal Code* allows the Governor in Council to establish a list of entities where there are reasonable grounds to believe the entity knowingly participated in or facilitated a terrorist activity as defined by the *Criminal Code*.

Information considered during the Governor in Council process is protected from disclosure. However, the administrative process for preparing and proposing entities for a listing consideration to Governor in Council involves the production of a detailed security intelligence/ criminal-report designed to meet the test for listing established in the *Criminal Code* and appropriate consultation with various stakeholders prior to Governor in Council consideration.

The process for listing entities under the *Criminal Code* involves numerous checks and balances and is based on the necessity that reasonable grounds to believe the entity engages, or engaged, in terrorist activities, and did so knowingly - is met.

There are currently 34 entities listed under the *Criminal Code* (see response 1.9). Twenty-one (21) of those are not listed by the Al Qaida and Taliban Sanctions Committee and include:

Abu Nidal Organization, Aum Shinrikyo, Basque Fatherland and Liberty, Gamma'a al-Islamiyya, Hamas, Hizballah, Kurdistan Worker's Party (PKK), National Liberation Army (ELN), Revolutionary Armed Forces of Colombia (FARC), United Self-Defense Forces of Colombia (AUC), Shining Path (Sendero Luminosa – SL), Palestinian Islamic Jihad (PIJ), Palestinian Liberation Front (PLF), Popular Front for the Liberation of Palestine (PFLP), PFLP-General Command (PFLP-GC), Lashkar E-Tayyiba, Al-Aqsa Martyrs Brigade, Vanguards of Conquest, Babbar Khalsa International, Babbar Khalsa, International Sikh Youth Federation.

A complete listing of those on the *Criminal Code* list can be seen at:
http://www.psepc.gc.ca/national_security/counter-terrorism/AntiTerrorism_e.asp

The process for listing entities under the *Criminal Code* is established in legislation and is driven by threats to the security of Canada. As previously indicated, the process involves numerous checks and balances and is based on the necessity that reasonable grounds to believe the entity engages, or engaged, in terrorist activities, and did so knowingly - is met.

The time-line for listing an entity varies from case-to-case and is dependant upon such factors as the amount and quality of information available, ability to meet the legislative test for listing and decision of the Governor in Council.

To date no persons or entities have been prosecuted for inviting support for proscribed organizations and/or other terrorist groups or organizations under the provisions in the *Criminal Code*.

**1.17 Please outline the legal and administrative procedures developed by Canada to protect port facilities, ships, persons, cargo, cargo transport units, off-shore installations and ship's stores from risks of terrorist attacks. Have competent Canadian authorities put appropriate procedures in place to enable them to review and update Canada's transport security plans as and when appropriate?**

On January 22, 2003 the Minister of Transport, on behalf of the Government of Canada, announced a five-year package of initiatives of up to $172.5 million designed to further enhance the security of Canada's marine transportation system and maritime borders. The marine security projects focus on safeguarding and protecting our marine infrastructure, surveillance of Canadian waters and improving our emergency response capabilities. Specific projects include: increased surveillance and tracking of marine traffic, including "near real-time" identification and tracking of vessels in Canadian waters; screening of passengers and crew on board vessels; installing new detection equipment in ports to screen containers for radiation; new funding for the enhancement of the RCMP Emergency Response Teams and the establishment of permanent investigator positions at major ports; making further improvements to port security by establishing restricted areas and requiring people working within these areas to undergo thorough background checks; counter-terrorism training exercises; visas for seafarers joining ships in Canada; and developing and implementing new security requirements in line with recent recommendations of the International Maritime Organization (IMO).

http://www.tc.gc.ca/n_ .iaaroom/releases/nat/2003/03-gc001.htm

In order to implement the IMO's International Ship & Port Facility Security (ISPS) Code, which requires SOLAS class ships on international voyages and port facilities that service them, to conduct security assessments and develop security plans, Canada has developed regulations. The draft regulations, expected to be promulgated in Spring of 2004, can be found at:
http://www.tc.gc.ca/vigilance/sep/marine_security/regulatory_menu.htm

As required by the ISPS Code, port facilities determine, in consultation with Transport Canada, when it is necessary to update the security plans and then resubmit them to the Transport Canada for approval. Enforcement and compliance of international environmental and safety standards are handled by the Port State Control.

**1.18 Has Canada implemented the standards and recommendations of the International Civil Aviation Organization (Annex 17)? Could Canada inform the CTC when the ICAO safety audit of Canada's international airports has been completed?**

Canada is committed to implementing the standards and recommendations of the International Civil Aviation Organisation (ICAO).

Canada implements its Annex 17 obligations through a comprehensive and integrated national program of legislation/regulations, regulatory oversight and enforcement, intelligence, training, awareness and other elements. Authority for the development, maintenance and implementation of Canada's aviation security program is vested with the Minister of Transport under the *Aeronautics*

*Act*, which gives the Minister responsibility for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics, including aviation security. Day-to-day administration of the program is conducted by Transport Canada. The Canadian Air Transport Security Authority (CATSA), is a Crown corporation based in the National Capital Region and came into existence on April 1, 2002 through Bill C-49. CATSA reports to Parliament through the Minister of Transport and is responsible for security screening operations at Canadian airports.

Further information on Canada's aviation security program - including applicable legislation/regulations - can be found at the following websites:

http://tcinfo/vigilance/en/securityemergencypreparedness/nationaltransport/policy/aviation.htm

http://www.catsa-acsta.gc.ca/english/index.htm

Canada has not yet been audited under ICAO's Universal Security Audit Programme (USAP) and is not scheduled to be audited in 2004.

**1.19 The CTC would appreciate it if Canada could provide an outline of the steps which it has taken or which it proposes taking in regard to:**

**The ratification and implementation of the United Nations Convention against Transnational Organised Crime and the supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition:**

Canada takes the ratification process very seriously and is working diligently to ensure full and proper compliance. Prior to the ratification of an international legal instrument by Canada, the government must ensure that a domestic regime is in place that will allow the implementation of commitments Canada is about to undertake under the treaty.

Canada has already ratified the Convention and the two other Protocols. The process leading to the ratification of the *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms Their Parts and Components and Ammunition*, supplementing the *United Nations Convention Against Transnational Organized Crime*, requires the drafting and adoption of new legislation and regulations. Both involved going through a lengthy and complex process (detailed below).

The necessary legislative amendments were enacted in May 2003. The legislative process is now complete but the necessary regulations to bring Canada into full conformity with the Protocol are still being developed.

The regulatory process is well underway. Following reviews by the appropriate House of Commons and Senate Committees, the government will consider any Parliamentary recommendations, as well as comments received from the public, with a view to finalizing the regulations.

Once the regulations are in place, a formal decision by the federal Cabinet is then required before Canada can file the necessary instrument of ratification. In the interim, Canada has stringent laws and administrative measures for controlling the import and export of firearms, parts, components and ammunition, and for controlling the possession and transfer of such items while they are in the country.

**The implementation of the Recommendations of the World Customs Organisation (WCO) concerning the above mentioned Protocol**

The Canada Border Services Agency (CBSA), as a member of the WCO, supports both the Recommendation of the Customs Co-Operation Council on the Insertion in National Statistical Nomenclatures of Subheadings to Facilitate the Monitoring and Control of Products Specified in the Protocol Concerning Firearms Covered by the *UN Convention Against Transnational Organized Crime* and the Recommendation of the Customs Co-Operation Council Concerning the *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*.

The Legislative amendments introduced to help Canada ratify the UN Protocol received Royal Assent in May 2003. The CBSA is awaiting the finalization of the associated regulations and their coming into force in order to fully implement the UN Protocol and the WCO Recommendations.

**The use of electronic reporting and the promotion of the security of the supply chain as provided for in the General Annex to the revised WCO Kyoto Convention, as well as the standards of the WCO**

Canada supports the revised WCO *Kyoto Convention* and was one of the first signatories. It has not yet been implemented. Canada participated in World Customs Organization Task Force on Security and Facilitation of the International Trade Supply Chain.

Canada was one of the lead countries in the development of the WCO Resolution on Security and Facilitation of the international trade supply chain that included:

- Full review of the WCO Data Model by Summer of 2003;
- - Guidelines to assist members to develop legal basis and necessary processes to enable the advance electronic transmission of customs data;
- Cooperative arrangements between members and industry on the security and facilitation of the international trade supply chain;

Canada was the first country to implement WCO data model and is an active member of the WCO Information Management Sub-Committee as well as the WCO Data Model Working Group.

**The implementation of the Programme of Action (adopted by the UN Conference to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons.**

This summary pertains to the implementation by Canada of the United Nations (UN) Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Programme of Action). The full report was presented to the (UN) Department of Disarmament Affairs at the Biennial meeting of States to consider the Implementation of the Programme of Action on Small Arms in July 2003 a copy of which is available under UN Document Symbol A/CONF.192/BMS/2003/CRP.48 .

**National Level**

The Canadian National Committee on Small Arms and Light Weapons is Canada's national coordination body that advises the government on the implementation of the UN Programme of Action, assists in coordinating this implementation and fosters the exchange of information on SALW activities.

The possession, export controls, brokering, marking / tracing / record keeping, disposal and illegal aspects of SALW fall under an assortment of legislations, regulations and administrative procedures. These include the *Firearms Act*, the *Export and Import Permit Act*, the *Defence Production Act*, the Controlled Goods Program, the *United Nations Act*, the Wassenaar Arrangement and the *Criminal Code*. A number of bodies are responsible for various aspects of SALW including the Royal Canadian Mounted Police, Department of Foreign Affairs and International Trade, Department of National Defense, the Criminal Intelligence Services Canada, National Police Services and the Canadian Firearms Centre.

Canada has signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime and the Inter-American Convention against the Illegal Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials of the Organization of the American States. Amendments to the *Firearms Act*, tabled in Parliament in March 2001 and passed in May 2003, will pave the way for the drafting of regulations to ensure that Canada is compliant with the firearms provision of both documents.ith the enactment of new legislation, expected in 2004, the entire responsibility for the import of firearms would shift to the Canadian Firearms Centre. Legislation that would permit Canada to require more fulsome marking of newly manufactured or newly imported firearms has received Royal Assent, but enabling regulations are currently under consideration following recommendations from consultations with Parliamentary committees. Finally, in keeping with multilateral commitments, Canada will soon introduce in-transit regulations permitting the transit, through Canada, by businesses, of restricted and non-restricted firearms.

**Regional Level**

Since 2001, Canada has supported, and continues to support, a variety of workshops and seminars, in Central and South East Asia, Latin America, Africa and Eastern Europe on the implementation of the UN Programme of Action. Furthermore, Canada has provided expertise at several levels to the international community and has contributed to an array of activities, including, but not limited to,

disarmament, training, research and reintegration programmes, in Moldova, Albania, Serbia Montenegro, Latin America and the Horn of Africa and the Great Lakes region.
Canada is an active participant in the Wassenaar Arrangement. Civil society representatives in Canada are also engaged on the issue through the annual government-NGO consultations on peace-building and human security and through the new National Committee on SALW.

**Global Level**

Canada usually implements sanctions imposed by the United Nations Security Council through regulations made under the *United Nations Act*. Once regulations are in place, Canadian authorities such as the Canada Customs and Revenue Agency are responsible for inspecting and detaining goods that are in violation of the sanctions. The RCMP may be called to investigate and lay charges.

Canada adheres to the reporting requirements of the Wassenaar Arrangement, under which Participating States exchange information on deliveries to non-participating states of conventional arms. Canada submits annual reports to the UN Conventional Arms Register and to the OSCE. In addition, the marking system of the Canadian Armed Forces has been reported to the OSCE. The RCMP National Police Services is in the process of developing a national strategy on firearms smuggling to foster improved sharing of intelligence and operational support and the Department of National Defence conducts a wide range of training in the general fields of physical security of facilities, general inventory control, record management, etc.

United Nations S/2004/133

# Security Council

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## Letter dated 17 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 November 2003 (S/2003/1063). The Counter-Terrorism Committee has received the attached fourth report from Singapore submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-24793 (E) 310304

## Annex

### Letter dated 17 February 2004 from the Permanent Representative of Singapore to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Please refer to your letter dated 22 October 2003, which requested a fourth report from the Singapore Government pursuant to paragraph 6 of Security Council resolution 1373 (2001). On 22 January 2004, I wrote to you to explain the reason for the delay in the submission of our report.

We have just received the report, which I am pleased to submit to you and to the Committee (see enclosure).

(*Signed*) Kishore **Mahbubani**
Ambassador Extraordinary and Plenipotentiary

**Enclosure***

## SINGAPORE'S RESPONSE TO THE QUERIES RAISED BY THE COUNTER-TERRORISM COMMITTEE (CTC) REGARDING SINGAPORE'S THIRD REPORT TO THE CTC

The CTC considers the following as priority areas in the implementation of resolution 1373 by Singapore:

- Effectiveness in the protection of the financial system; and
- Effectiveness of customs, immigrations and border controls.

In this context, the CTC, in the first letter to Singapore on Stage B matters, will focus on those aspects of the Resolution while others will be addressed in further letters. Singapore's response to the questions raised by the CTC in its letter of 22 Oct 20003 are as follows:

### 1. Implementation measures

**Effectiveness in the protection of the financial system**

**Subparagraph 1.1:**

- **The CTC would be grateful to be provided with an outline of the relevant provisions of The Terrorism (Suppression of Financing) Act 2003 which give effect to articles 2, 5 and 18 of the Convention for the Suppression of the Financing of Terrorism.**

*Singapore's response*

*Sections 3 to 6 of Singapore's The Terrorism (Suppression of Financing) Act comprehensively cover the scope of criminal activities set out in Article 2 of the International Convention for the Suppression of the Financing of Terrorism.*

* Annexes are on file with the Secretariat and are available for consultations.

*Section 3 of the Terrorism (Suppression of Financing) Act provides that it is an offence for any person to provide or collect property for a terrorist act, section 4 provides that it is an offence for any person to provide or collect property for a terrorist purpose, section 5 provides that it is an offence for any person to use or possess property for terrorist purposes, and section 6 provides that it is an offence to deal with terrorist property.*

*To ensure that the Terrorism (Suppression of Financing) Act is consistent with the International Convention for the Suppression of the Financing of Terrorism, 'property' is defined in the Terrorism Act to cover the same scope of subject matter as "funds" in the Convention. Similarly, the scope of "terrorist act" in the Terrorism (Suppression of Financing) Act is also based on Articles 2(1)(a)-(b) of the International Convention for the Suppression of the Financing of Terrorism.*

*Section 35 of the Terrorism (Suppression of Financing) Act, which gives effect to Article 5 of the International Convention for the Suppression of Financing of Terrorism, provides that if a body corporate commits an offence under the Terrorism (Suppression of Financing) Act, the "director, manager, secretary or other similar officer or partner of the company, firm, society, [etc]" shall be guilty of that offence unless that person can show that the offence was committed without his consent or connivance, and that he had exercised due diligence.*

*Singapore has implemented many of the suggested measures in Article 18, even prior to the enactment of the Terrorism (Suppression of Financing) Act. For example, money-transmission agencies are regulated under the Money-Changing and Remittance Businesses Act (Chapter 187). Other aspects of Article 18 have already been given effect by the Banking Act, the United Nations (Anti-Terrorism Measures) Regulations, and the Monetary Authority of Singapore (Anti-Terrorism Measures) Regulations. These have also been discussed in Singapore's previous reports dated 21 December 2001 and 20 June 2002.*

**Subparagraph 1.2:**

- **Effective implementation of sub-paragraph 1 (a) requires States to have in place effective executive machinery for preventing and suppressing the financing of terrorist acts. In this context the CTC would appreciate learning whether the Commercial Affairs Department has sufficient resources (human,**

**financial and technical) to enable it to carry out its mandate. Please provide appropriate data in support of your response.**

*Singapore's response*

*In the Commercial Affairs Department (CAD), the Financial Investigation Branch (FIB) is tasked to and has adequate resources to perform terrorism financing investigations. FIB officers are trained at the graduate level in the fields of accountancy and other relevant disciplines. They are divided into two teams led by Head FIB, who himself is an experienced graduate officer. Both teams perform terrorism financing and money laundering investigations. Funding for the FIB comes under the overall CAD budget. FIB has access to a broad range of information sources to enable it to undertake investigations into terrorism financing offences. Such information sources include Suspicious Transaction Reports (STR) information and relevant links to associated entities, criminal records, information on current investigations, household screenings, employment records, company records, bankruptcy and marriage records, vehicles, property, shares and security holdings.*

**Subparagraph 1.3:**

- **The effective implementation of sub-paragraph 1 (a) requires States to have in place effective executive machinery for the prevention and the suppression of the financing of terrorist acts. In this regard, does Singapore provide training to its administrative, investigative, prosecutorial and judicial authorities aimed at enforcing its laws in relation to typologies and trends to counter terrorist financing methods and techniques? In the same context, does Singapore train the said authorities in techniques for tracing property, which represents the proceeds of crime or is to be used to finance terrorism? Please outline relevant programs or/and courses. What mechanisms/programs has Singapore in place to educate its different economic sectors as to how to detect suspicious and unusual transactions related to terrorist activities and as to how to prevent the movement of illicit money?**

*Judicial education in the Singapore judiciary plays two key roles. First, it ensures that all Judges, Judicial Commissioners and registrars in the Supreme Court, and all district judges and magistrates in the Subordinate Courts are inculcated with the necessary skills and tools to carry out their core responsibilities proficiently in the adjudication of cases and administration of justice. Secondly, it*

*seeks to build up a forward-looking judiciary, which keeps abreast of the developments in the social, political and economic landscape in which it serves.*

*The judicial education programme is classified into five core areas, namely, bench skills, legal knowledge, social context education, judicial administration and ethics and conduct.*

*The judiciary must keep up with the latest developments, not only in the law, but also in new areas, which have an impact on the evolving nature of the law, such as the latest trends in crime, in particular, cross-border crimes and, technology.*

*The Subordinate Courts of Singapore takes a serious view of terrorism and adopts a pro-active approach to prepare the Subordinate Courts Judges to deal with terrorism related cases.*

*The Subordinate Courts have a Specialised Commercial, Civil and Criminal Courts Cluster headed personally by the Senior District Judge to deal with, inter alia, specialised offences such as financial fraud, money laundering, and computer crime. The Judges in this cluster are specially selected from amongst the best Judicial Officers in the Subordinate Courts. Most of them, including the Senior District Judge, have Masters Degrees in Law and other disciplines. Any cases in the Subordinate Courts involving terrorist financing would be dealt with by this Cluster. Some of the Judges also have extensive experience prosecuting complex financial fraud and cybercrime offences before their appointment to the Subordinate Courts Bench.*

*In addition, the Subordinate Courts also have in place a comprehensive continuing judicial education programme designed to keep the Judges of the Subordinate Courts abreast of changes in the law and the latest crime and other trends. In the year 2003 alone, at least 2 seminars were presented for Judges on related topics, including the Current And Emerging Threat Of Suicide Terrorism and Tackling Cybercrime. As part of this programme, officers from the Monetary Authority of Singapore, Singapore Exchange and other regulatory agencies are also invited, from time to time, to update the Judicial Officers on the latest trends and thinking in their fields. Our Judges also attend closed-door sessions on terrorism when available. Efforts such as these keep the Judges of the Subordinate Courts attuned to the threat of terrorist financing activities.*

***The Monetary Authority of Singapore (MAS)***

*The Monetary Authority of Singapore (MAS) emphasises training to upgrade and sharpen the supervisory and inspection skills of its staff. MAS conducts in-house training on anti-money money laundering and counter-terrorist financing where emerging trends and typologies are discussed. Guest speakers from the law enforcement authorities are also invited to present on relevant subjects such as Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) risks from the law enforcement perspective. MAS also sends its officers to participate in mutual evaluation missions organised by the Financial Action Task Force and the Asia-Pacific Group on Money Laundering as a form of training as well. MAS officers regularly attend international conferences/workshops on AML/CFT matters, for example, the Financial Action Task Force and Asia Pacific Group Typologies Workshop. They also attend seminars/workshops on AML/CFT organised by industry bodies and training institutions, such as the Association of Banks in Singapore and the IMF-Singapore Regional Training Institute.*

***Commercial Affairs Department (CAD)***

*Officers from the Commercial Affairs Department (CAD) receive domestic and international training on terrorism financing typologies through attendance at annual Financial Action Task Force (FATF) and Asia-Pacific Group on Money Laundering (APG) Typologies Workshops. In addition, officers are sent for conferences and workshops organised by various international organisations where typologies of terrorism financing are discussed. Suitable officers are identified to attend specialised courses on asset tracing conducted by overseas investigative agencies. In addition, on-the-job training and working under an experienced team leader gives officers guidance and direction, especially with regards to investigation techniques and processes that are utilised for funds flow tracing. Continuous training is addressed through a yearly learning needs analysis where individual officers identify specific areas in which they would like to build more expertise.*

*CAD has embarked on a public education program with certain financial sectors including banks, insurance companies and moneychangers/remitters to share STR typologies and "red flags" for detection of STRs. For this purpose, CAD has organised a workshop on Money Laundering and TF and - conducted a similar*

*workshop with the public accountants in November 2003. A similar outreach to the legal sector is being planned in April 2004.*

***Singapore's Prosecutorial Authorities***

*Singapore's prosecutorial authorities conduct regular in-house training sessions on the laws relating to countering terrorist financing as well as the relevant laws and procedures on confiscation. Manuals detailing the procedures for enforcing the relevant laws have been prepared to ensure a consistent approach. Legal officers and paralegals are also trained to prepare court documents for restraint orders, production orders and forfeiture orders. In addition, legal officers attend local as well as international meetings and conferences relating to financing of terrorism offences. They also participate regularly in the training sessions conducted by the investigative authorities.*

***Singapore Customs***

*Singapore Customs conducts regular outreach sessions to educate industries on Singapore's strategic goods control system. Participants are also reminded on the need to exercise due diligence, particularly with regards to goods originating from the countries and entities that are listed in the lists compiled under the relevant United Nations Security Council Resolutions, and the unilateral lists of the United States and the European Union.*

**Subparagraph 1.4:**

- **With reference to the effective implementation of sub-paragraph 1 (a) of the Resolution the CTC would be grateful to know whether legal obligations have been imposed on lawyers and other professionals to report suspicious financial transactions to the relevant authorities? Are the relevant Singaporean authorities competent to share information, relating to suspicious transactions, with other States if the information in question relates to suspected money laundering or to the financing of terrorism in other States?**

*Singapore's response*

*Under Section 39 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act ("CDSA"), all persons are obligated to make a*

*Suspicious Transactions Report (STR) if that person has reason to suspect that any property is linked to, or represents the proceeds of, criminal activity, and that suspicion arose in the course of his business or employment. This obligation to make a STR is wide enough to cover not just lawyers, accountants and other professionals, but all persons. The only statutory exception to this obligation is under section 39(4) of the CDSA, if the information in question is subject to legal privilege. However, legal privilege is not absolute. Section 128 of the Evidence Act provides that the following professional communications between an advocate or solicitor and his client are not subject to legal privilege:*

- *any communication made in furtherance of any illegal purpose;*

- *any fact observed by any advocate or solicitor in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.*

*Apart from the above, rule 22 of the Legal Profession (Professional Conduct) Rules also provides that an advocate or solicitor may not give any legal advice for an illegal purpose.*

*The Suspicious Transaction Reporting Office (STRO) is able to exchange STR information with its foreign counterparts under Section 41 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.*

**Subparagraph 1.5:**

- **Sub-paragraph 1 (a) of the Resolution requires financial institutions and other intermediaries to identify their clients and to report suspicious financial transactions to the relevant authorities. In this regard would Singapore please provide the CTC with the number of suspicious transactions reports (STR) received by the competent authorities, with particular regard to STRs from:**

- **off-shore banks;**
- **bureaux de change;**
- **money remittance/transfer services**

**Please also indicate the number of STRs analysed and disseminated as well as the number of STRs which have led to investigations, prosecutions or convictions.**

*Singapore's response*

*The information requested by the CTC is provided at* ***Annex A****. We are unable to provide a figure for the STRs submitted specifically by offshore banks. The figure provided is for all banks. Also, money changers and remittance businesses are treated as one category under our computerised system.*

**Subparagraph 1.6:**

- **As regards the implementations of sub-paragraphs 1 (a) and (d), could Singapore please provide the CTC with statistics on the number of cases where sanctions for providing support to terrorists or terrorist organisations were imposed on financial and non-financial institutions. Do Singapore's authorities audit financial institutions to verify compliance with requirements to submit suspicious transactions reports? Are bureaux de exchange and remittance agencies routinely audited? How often are financial institutions subject to such audits? What other specific measures have Singapore authorities taken to identify, measure and regulate any informal banking flows that occur outside the official regulated system?**

*Singapore's response*

*To date, financial institutions in Singapore have not found any transactions or assets belonging to terrorists or terrorist organizations identified by the United Nations Security Council.*

*The Monetary Authority of Singapore (MAS) conducts inspections regularly to assess the adequacy of financial institutions', procedures[1] for identifying and reporting Suspicious Transaction Reports (STRs). At the conclusion of an inspection, a report is drawn up and MAS will take follow-up action with the institution concerned on the steps to be taken to correct any shortcomings or deficiencies. MAS examiners also assess staff awareness and vigilance in Anti-Money Laundering and Combating Financing of Terrorism and training received.*

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1 Including bureaux de change and remittance agencies.

*In addition to the MAS' own inspections, under the Money-Changing and Remittance Business Act (MCRBA) and licensing conditions, MAS requires independent external auditors to audit annually, among other things, bureaux de change and remittance agencies, for compliance with MAS Notices and the applicable laws*[2]*. Bureaux de change and remittance agencies are also required to furnish their annual audited reports to MAS.*

**The Corruption Drug Trafficking and Serious Offences Act (CDSA) (Section 39(1)) imposes the mandatory obligation for all persons, including financial institutions to file a STR if he has reasonable grounds to suspect that property is linked to criminal activity, and such suspicion arose in the course of employment or business. The Terrorism (Suppression of Financing) Act also provides for a duty to disclose any information about any transaction or proposed transaction in respect of any property belonging to any terrorist or terrorist entity. To complement the CDSA, the MAS has also issued anti-money laundering guidelines as contained in the MAS Notices on the Prevention of Money Laundering (MAS Notices). The MAS Notices state that each financial institution shall institute a system for reporting suspicious transactions under the CDSA.*

**Subparagraph 1.7:**

- **The provisions of the UNSCR 1373 apply to all terrorists, not only those included in the UNSCR 1267 list. How do legal provisions and administrative procedures in Singapore ensure the implementation of the requirements of sub-paragraphs 1 (a) and (d) of the Resolution with regard to any individuals or entities that are not included in the UNSCR 1267 list? In particular the CTC is interested in the procedure used to proscribe foreign terrorist organisations (other than those listed by the Security Council), if any, as well as data as regards the number of organisations involved and/or corresponding examples. How long does it take to prescribe a terrorist organisation at the request of another State or based on information supplied by another State? In the absence of the relevant mechanism please outline steps Singapore intends taking to meet in full those aspects of the Resolution.**

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[2] It is an offence under the MCRBA for any person to conduct remittance or money-changing business without a valid licence. Persons conducting illegal remittance or money-changing business would be referred to CAD for investigation. CAD investigates all illegal remittance or money-changing activities. The penalty for conducting illegal remittance or money-changing business is a fine not exceeding S$50,000 or to imprisonment for a term not exceeding 2 years or to both.

*Singapore's response*

*Singapore's counter-terrorism laws apply to all persons, whether or not they have been included in the United Nations Security Council Resolution 1267 ("Resolution 1267 (1999)") list.*

*The implementation of sub-paragraphs 1(a) and 1(d) of Resolution 1373 (2001) is effected by the Terrorism (Suppression of Financing) Act which is discussed above, and section 27A of the Monetary Authority of Singapore Act (MAS Act) which has been described in detail in Singapore's 2nd report to the CTC dated 20 June 2002 (paragraphs 3 to 7).*

*The directions issued by the Monetary Authority of Singapore to financial institutions to freeze accounts and assets would cover persons and entities that are listed, pursuant to Resolutions 1267 (1999), 1333 (2000) and 1390 (2002), by the Sanctions Committee established under Resolution 1267 (1999). However, if a country has information about terrorists or terrorist assets in Singapore, it can forward the information to the Singapore authorities for investigation. Singapore will deal firmly with any person involved in the financing or support of terrorism, including the freezing of assets and any other necessary action under the relevant laws.*

**Effectiveness of customs, immigration and border control**

**Subparagraph 1.8:**

- **Implementation of paragraphs 1 and 2 of the Resolution requires the operation of effective customs and border controls with a view to preventing and suppressing the financing of terrorist activities. Does Singapore impose controls on the cross-border movement of cash, negotiable instruments, precious stones and metals (for example, by imposing an obligation to make a declaration or to obtain prior authorisation before any such movements take place)? Please provide information concerning any relevant monetary or financial thresholds.**

*Singapore does not impose controls on cross-border movement of cash or financial instruments. However, customs officers would need to make Suspicious Transaction Reports (STRs) under the Section 39(1) of the CDSA as laid out in the*

*footnote on S39(1) of CDSA in Subparagraph 1.6 above. Any import or export of goods would require an import and export permit declaration.*

*Cash reporting requirement at the borders may be limited in its effectiveness as launderers and terrorists are unlikely to declare their cash holdings at the border. From the efficiency standpoint, the number of cash transaction reports resulting from such a system generates excessive unproductive reports that tie down the resources of various agencies, in particular the Financial Intelligence Unit, which can be better deployed elsewhere. It is far more effective to put safeguards around our financial system and restrict access to it through vigilant application of anti-money laundering regulations and the reporting of transactions that are truly suspicious.*

**Subparagraph 1.9:**

- **In regard to preventing the movement of terrorists please outline legal and administrative procedures developed by Singapore to protect the port facility and ships, persons, cargo, cargo transport units, off-shore installations and ship's stores from the risks of a terrorist attacks. Please outline any procedures adopted in Singapore for controlling access to the ship; monitoring restricted areas to ensure that only authorised persons have access; supervising the handling of cargo and ship stores. Do Singaporean competent authorities put procedures in place for the periodic review of transport security plans with a view to keeping them up-to-date? If yes, please outline.**

*Singapore's response*

*Maritime security is a vital component of Singapore's national security. The security measures in the Singapore Strait and territorial waters have been constantly reviewed and enhanced. The maritime security agencies, in particular the Republic of Singapore Navy (RSN), the Police Coast Guard (PCG), the Maritime and Port Authority of Singapore (MPA) and the Immigration and Checkpoints Authority (ICA) are ready and vigilant, working in close co-ordination with one another to protect Singapore against sea-borne threats.*

*Singapore is also working towards the implementation of the International Ship and Port Facility Security (ISPS) Code approved by IMO in December 2002. The Code is a new comprehensive security regime that seeks to establish an international framework of co-operation between governments, government agencies and the*

*shipping and port industries in order to detect and take preventive measures against security incidents affecting ships or port facilities used in international trade. To give effect to the ISPS Code which will come into force internationally on 1 July 2004, MPA is amending its Merchant Shipping (Safety Convention) Regulations, 1999 and MPA (Port) Regulations, 1997. Owners and operators of Singapore port facilities, as well as shipowners of Singapore and foreign ships, are required under the ISPS Code to conduct security assessments, develop security plans, train security officers, and conduct regular drills and exercises for their port facilities and ships.*

*Other port and ship security measures that have been implemented by Singapore are as follows:*

- *Certain sensitive areas such as the waters around chemical and offshore oil terminals have been declared as prohibited areas. Vessels and craft are not allowed to enter, anchor, moor or transit these prohibited areas without the prior approval of the relevant authority;*

- *Routes for ferries, trade craft and pleasure craft entering and leaving the port have been diverted away from the sensitive installations such as petrochemical terminals;*

- *The Singapore Vessel Traffic Information System also closely monitors the movements of sensitive vessels including LPG, LNG, chemical tankers, passenger ships and oil tankers;*

- *The security at sea entry checkpoints has been tightened to prevent entry of undesirable persons and dangerous weapons. Ships' crew and passengers from vessels at anchorages and offshore terminals can land only at two designated landing points (West Coast Pier and Clifford Pier) where customs, immigration and quarantine (CIQ) facilities are deployed. They are subjected to "face-to-face" checks by the relevant authority at these designated landing points;*

- *Ships on arrival and before departure have to anchor at designated Immigration Anchorages where "face-to-face" checks of crewmembers are conducted by the relevant authority;*

- *Security checks on passengers and luggage with the use of X-ray machines, walk-through and metal detectors have been implemented at cruise and ferry terminals;*

- *Surveillance of port waters has been stepped up with the increased presence of patrol craft and monitoring using radar; and*

- *Singapore enforcement agencies conduct routine patrols along the Singapore Strait, including random escort operations for high value merchant vessels. Security measures have also been enhanced to protect stationary vessels along the Strait and in Singapore territorial waters. Maritime security procedures and systems are regularly tested out during exercises.*

*With regard to the security of cargo, in particular container cargo, Singapore's framework for container security requires that all containers entering Singapore enter through designated free trade zones (FTZs), where proper security measures are in place. Documentary oversight of all containers is exercised. Risk profiling is carried out based on advance cargo information, and identified high-risk containers are set aside and scanned for illicit material. Singapore implemented the Container Security Initiative (CSI) in partnership with the USA in March 2003, under which containers destined for the USA are targeted by US Customs officials stationed within the port of Singapore for scanning. Risk profiling has been aided by recent US enforcement of its 24-hour Manifest Rule, which mandates that all carriers submit full cargo manifests 24 hours before cargo bound for the USA is loaded onto the vessel in Singapore.*

**Subparagraph 1.10:**

- **Sub-Paragraph 2 (b) requires States to take the necessary measures to prevent the commission of terrorist acts. In that regard, could Singapore please explain how it determines the beneficial ownerships of ships registered under it, as a "Flag State", and how it compares its lists of 'known or suspected terrorists with the names of the beneficial owners of these vessels with a view to detecting terrorist involvement?**

*Singapore's response*

*The Singapore Registry of Ships (SRS) requires the owner to incorporate a company in Singapore who for all intents and purposes will own the vessel. The company will also have to have a paid-up capital of at least 10% of the value of the first ship registered, with a minimum amount of S$50,000. The shareholders of the company will have to be declared.*

**Subparagraph 1.11:**

- **The CTC would be interested in learning how the Singaporean Customs Authorities, and other relevant bodies, deal with problems of deception, such as the under-invoicing of imports and the over-invoicing of exports bearing in mind that such methods can be used to divert resources to support terrorism in Singapore and throughout the world.**

*Singapore's response*

*Wrong invoicing for the purpose of import/export permit declaration is an offence under Singapore's laws. The penalties for wrong invoicing are: fines not exceeding $10,000 or the equivalent of the exact amount of customs duty, excise duty or tax payable, whichever is the greater, or to imprisonment for a term not exceeding 12 months or to both.*

**Subparagraph 1.12:**

- **The CTC would be pleased to receive an outline of Singapore's legal provisions governing the granting of citizenship to foreigners. Is a foreigner, who has been granted citizenship rights in Singapore, allowed to change his or her name? How does Singapore establish a person's true identity, before authorising such a change in name?**

*Singapore's response*

*Part X of the Constitution of the Republic of Singapore governs the granting of citizenship to foreigners. The relevant articles are as follows:*

*Article 121 - Citizenship by birth;*
*Article 122 - Citizenship by descent;*

*Article 123 - Citizenship by registration; and*
*Article 124 - Registration for minors.*

*For more details on the above articles, please refer to* ***Annex B***

*Regulation 10(1)(a) of the National Registration Regulations (NRR) requires that an IC holder (who is either a Singapore Citizen or Singapore Permanent Resident) who changes his/her name shall within 28 days report the fact to the nearest registration office and apply for a replacement IC with the correct particulars. Any amendment to the registered name must be substantiated with a Deed Poll and for the insertion of religious or married names, the relevant religious certificates and marriage certificate must be produced.*

*For authentication purposes, all foreigners granted Singapore citizenship are required to register for a Singapore citizen identity card (IC) under the NRR and have their fingerprints captured at the time of registration. If the holder changes his/her name, he/she would need to apply for a new IC. Authentication through fingerprint matching would be carried out prior to the issuance of the replacement IC reflecting the new name.*

**Subparagraph 1.13:**

- **The CTC would be interested in learning whether Singapore's laws permit the transmission of advance information, pertaining to passengers and cargo, to the relevant Singapore's authorities with a view to enabling those authorities to screen cargo and passengers before disembarkation. Similarly, the CTC would be interested in hearing whether Singapore's laws allow for the transmission of advance information, pertaining to cargo and passengers, to the authorities of other States with a view to enabling those other States to screen passengers and cargo before disembarkation?**

*Singapore's response*

*Import declarations have to be made in advance for all imports of goods into Singapore. The export and transhipment of controlled goods are also required to be declared in advance. These advance declarations are made under the Regulation of Imports & Exports Act and the Customs Act. The declarations are all made electronically through the TradeNet system. The electronic declarations allow*

*Singapore Customs to conduct risk profiling of the cargoes through which high-risk cargoes are selected for targeted checks.*

*Advance information on goods can be shared with relevant Singapore authorities for the investigation of offences under the Regulation of Imports & Exports Act and the Customs Act. The sharing of information pertaining to passengers with other States is allowed. Singapore may do so as part of our counter-terrorism efforts.*

**Subparagraph 1.14:**

- **Has Singapore implemented, using risk assessment principles, any special security measures on the import, export and transit movement of firearms, such as conducting security checks on the temporary storage, warehouses and means of transport carrying firearms, and requiring personnel involved in these operations to undergo security vetting? If yes, please give details.**

*Singapore's response*

*Singapore controls the export, re-export and transhipment of firearms and has also put in place legislation (Arms Offences Act, Arms & Explosives Act), which regulates the manufacture, possession and transfer of firearms, to prevent these items from being diverted for illicit purposes.*

*Most of the firearms imported into Singapore are for government departments who have proper secured and approved armouries. Private shooting clubs also have secured armouries with proper security features. Those arms that are due to be transhipped are bonded at the FTZ.*

*Singapore is the first Asian country to sign the Declaration of Principles for the Container Security Initiative (CSI) with United States on 20 Sep 2002. Under the CSI, containers destined for US ports may be selected for checks in the Singapore ports using the Vehicle and Cargo Inspection System (VACIS) for WMDs. The CSI screening has since commenced on 17 Mar 2003.*

**Subparagraph 1.15:**

- **Is it necessary to lodge and register or check off the Goods declaration and supporting documents relating to firearms prior to the import, export or**

**transit movement of the goods as well as encourage importers, exporters or third parties to provide information to Customs prior to their shipment? Please outline also any appropriate mechanism to verify the authenticity of licensing or authorisation documents for the import, export or transit movements of firearms?**

*Singapore's response*

*For all imports, exports and transhipments, checks are conducted on relevant documents such as the end user certificates, bills of lading, invoices and import licences issued by the competent authority of the final destination country. Where some doubt exists over the accuracy or authenticity of any of these documents, such documents will be verified with the assistance of the diplomatic mission of the final destination country.*

**Subparagraph 1.16:**

- **Has Singapore's Customs Service implemented intelligence-based risk management on border to identify high-risk goods? Please outline data elements required by Customs Administration to identify high-risk consignment prior to shipment**

*Singapore's response*

*The Immigrations and Checkpoints Authority (ICA) ensures that the movement of people, goods and conveyances through Singapore's checkpoints is legitimate and lawful. In addition, Singapore Customs has implemented an intelligence-based risk management framework to target high-risk goods that are subjected to controls. The risk elements will depend on factors such as the destination/origin of the goods, the nature of the goods and the compliance record of the shipper.*

**Subparagraph 1.17:**

- **The CTC is aware that Singapore may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organisations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Singapore's response to these matters as well as details of efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373.**

*Singapore's response*

*The responses to the preceding questions are sufficiently detailed.*

**2. Assistance and guidance**

**Subparagraph 2.1:**

**• The CTC wishes to emphasise once more the importance, which it attaches to the provision of assistance and advice in connection with the implementation of Resolution 1373. The Committee is therefore anxious to maintain and develop the constructive dialogue, which it is already engaged in with Singapore in relation to this priority area.**

*Singapore's response*

*Singapore shares the Committee's view on the need to maintain and develop the existing dialogue. Like the CTC, Singapore also regards this as a priority area.*

**Subparagraph 2.2:**

**• Further, as regards Singapore's need for assistance in the area of ratification and implementation of the 12 International Conventions and Protocols relating to terrorism and strengthening its capacity against terrorism, the CTC would point out that the Government of Singapore may request technical assistance directly from the United Nations Office on Drugs and Crime Terrorism Prevention Branch under its Global Programme Against Terrorism. In particular, such assistance may include the drafting of legislation relating to counter terrorism, including the review of legislation in place for compliance with Resolution 1373 and the provisions of the 12 International Conventions and Protocol. The Government of Singapore may take advantage of the benefits of this programme by writing to the UNODC, by e-mail, or by fax, requesting technical assistance addressed to:**

**United Nations Office on Drugs and Crime**
**Terrorism Prevention Branch**
**Room E1282-Vienna International Centre**
**P.O.Box 500**
**A-1400-Vienna**

**Contact person:**
**Mr.Jean-Paul Laborde**
**Chief, Terrorism Prevention Branch**
**Tel:+431260604207**
**Fax:+431260605898**
**E-mail: jean-paul.laborde@unodc.org**
**Or cicp.tpb@unodc.org**

**Subparagraph 2.3:**

- **In that context, the Committee would be pleased to hear whether there are areas in which further assistance or advice might prove beneficial to Singapore in the steps which it is taking to implement the Resolution. The CTC would also appreciate receiving information from Singapore concerning areas where it might be in a position to provide assistance to other States in relation to the implementation of the Resolution.**

*Singapore's response*

*Singapore appreciates the offer of assistance in the area of ratification and implementation of International Conventions and Protocols relating to terrorism and strengthening our capacity against terrorism. Singapore will avail itself of such assistance as and when it is deemed necessary.*